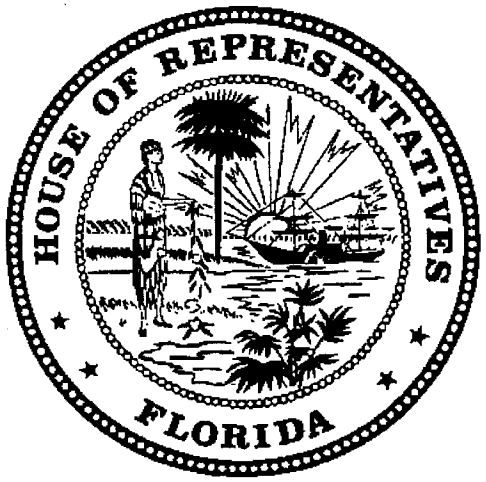

Transportation & Economic Development Appropriations Committee

Tuesday, April 11, 2006
10:00 a.m. – 12:00 p.m.
Reed Hall (102)

Allan G. Bense
Speaker

Don Davis
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Transportation & Economic Development Appropriations Committee

Start Date and Time:	Tuesday, April 11, 2006 10:00 am
End Date and Time:	Tuesday, April 11, 2006 12:00 pm
Location:	Reed Hall (102 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 97 Safety Belt Law Enforcement by Slosberg
HB 683 CS Growth Management by Traviesa
HB 1049 CS Driver's Licenses by Traviesa
HB 1465 CS Speed Limit Enforcement on State Roads by Altman
HB 1589 CS Specialty License Plates by Smith
HB 7031 Department of State by Tourism Committee
HB 7081 Administrative Procedures by Governmental Operations Committee
HJR 7093 State Bonds for Transportation Funding by Transportation Committee
HB 7095 Transportation Financing by Transportation Committee
HB 7107 Trademarks by Economic Development, Trade & Banking Committee
HB 7253 Growth Management by Growth Management Committee

NOTICE FINALIZED on 04/07/2006 16:14 by SLB

Florida House of Representatives

Fiscal Council
Committee on Transportation & Economic Development Appropriations

Allan G. Bense
Speaker

Don Davis
Chair

AGENDA
Transportation & Economic Development Appropriations
Tuesday, April 11, 2006
10:00 a.m. – 12:00 p.m. Reed Hall (102 EL)

I. Meeting Call to Order

II. Opening remarks by Chairman Davis

III. Consideration of the following bill(s):

HB 97 Safety Belt Law Enforcement by Slosberg
HB 683 CS Growth Management by Traviesa
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HB 7095 Transportation Financing by Transportation Committee
HB 7107 Trademarks by Economic Development, Trade & Banking Committee
HB 7253 Growth Management by Growth Management Committee

IV. Closing Remarks & Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 97 Safety Belt Law Enforcement
SPONSOR(S): Slosberg
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	12 Y, 3 N	Thompson	Miller
2) Criminal Justice Committee	6 Y, 0 N	Kramer	Kramer
3) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

Current law requires a motor vehicle operator, front seat passengers, and all passengers and operators less than 18 years of age to wear safety belts. The "Florida Safety Belt Law" is enforced as a secondary offense for operators and passengers 18 and older; that is, law enforcement officers cannot stop motorists 18 and older solely for not using safety belts. Instead, an officer must first stop a motorist who is 18 or older for a suspected violation of state traffic, motor vehicle, or driver license laws before issuing a uniform traffic citation for failure to wear a safety belt. It is a primary offense to operate a motor vehicle in this state unless each passenger and the operator of the vehicle under the age of 18 are restrained by a safety belt or by a child restraint device.

HB 97 gives the act the popular name the "Dori Slosberg Safety Belt Law" and amends the Florida Safety Belt Law to provide for primary enforcement for all motorists. A law enforcement officer would be authorized to stop a motorist and issue a citation for a safety belt violation upon reasonable suspicion that the driver, any passenger under the age of 18 years, or any passenger in the front seat who is 18 years of age or older, is not restrained. A person violating this provision would be cited for a nonmoving violation, punishable by a $30 fine plus applicable fees and court costs. The fees and court costs vary from county to county, but the total paid for each citation would range from $68.50 to $89.50.

Primary enforcement of safety belt violations could result in an increase in the number of citations issued. However, the potential fiscal impacts to state and local governments resulting from penalty revenues are unknown because it is impossible to forecast how many additional citations may be issued. Crash-related injuries and deaths could be reduced thereby decreasing associated medical and insurance costs. If Florida enacts a primary safety belt law it will also be eligible to receive a one-time grant of $35.5 million from a federal safety belt incentive program (See Fiscal Comments section for additional details.)

This bill will take effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill expands the authority of law enforcement to detain motor vehicle operators, arguably increasing the scope of government rather than decreasing it

Promote Personal Responsibility—Currently, a person over 18 years of age may not be stopped for a safety belt violation as a primary enforcement action by a law enforcement officer. To the extent that primary enforcement allows more effective enforcement of the safety belt law, the bill tends to increase personal accountability of drivers and passengers for failure to comply with the law.

Safeguard individual liberty—Although the bill does not impose any new regulation upon motor vehicle operators, it does authorize law enforcement officials to detain an individual operating a motor vehicle in circumstances that under current law would not be reasonable grounds for stopping the motorist.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1986, the Legislature enacted the "Florida Safety Belt Law." Section 316.614, F.S., requires a motor vehicle operator, front seat passengers, and all passengers less than 18 years of age to wear safety belts. The law is enforced against any adult driver or adult front seat passenger who is not restrained by a safety belt. If a person under 18 years of age is unrestrained, the law is enforced against the driver. The "Florida Safety Belt Law" is enforced as a secondary offense; that is, law enforcement officers cannot stop motorists solely for not using their safety belts unless the operator or passengers are under 18. Instead, the officer must first stop the motorist for a suspected violation of Chapters 316, 320, or 322, F.S., before the officer can issue a uniform traffic citation for failure to wear a safety belt. In 2005, HB 1697 was passed to amend s. 316.614, F.S., making it a primary offense to operate a motor vehicle in this state unless each passenger and the operator of the vehicle under the age of 18 years is restrained by a safety belt or by a child restraint device.[1]

The penalty for failure to wear a safety belt is $30, plus administrative and court costs. The fees and court costs vary from county to county, but the total paid for each citation would range from $68.50 to $89.50. Revenues collected from citations issued for safety belt violations are distributed like other traffic citation revenues, pursuant to s. 318.21, F.S., except that $5 of each citation paid is directed to the Epilepsy Services Trust Fund. According to the Uniform Traffic Citation Statistics compiled by the Department of Highway Safety and Motor Vehicles, there were 300,213 safety belt violations during the 2004 calendar year.

Those not subject to the safety belt law include:

- Persons certified by a physician as having a medical condition that would cause the use of a safety belt to be inappropriate or dangerous;
- Persons delivering newspapers on home delivery routes during the course of their employment;
- Front seat passengers of a pickup truck in excess of the number of safety belts installed;
- Employees of a solid waste or recyclable collection service on designated routes during the course of their employment;

[1] This act also amended section 316.614, F.S. to provide that, by January 1, 2006, each law enforcement agency must adopt departmental policies to prohibit the practice of racial profiling. Further, the section requires law enforcement officers to record the race and ethnicity of a violator of the safety belt law and requires DHSMV to annually report this information to the legislature and the Governor.

- Persons occupying the living quarters of a recreational vehicle or the space within the body of a truck used for the storage of merchandise.

According to the National Highway Traffic Safety Administration (NHTSA) there are 22 primary states, 27 secondary states, and 1 state (New Hampshire) that effectively has no belt use law. The National Occupant Protection Use Survey (NOPUS) is an observational survey of safety belt use that began in 1994 and has been used by NHTSA to measure the nation's safety belt use. NOPUS has consistently found higher usage rates in the presence of primary laws, with collective statistically different rates of 83 percent in primary states compared to 75 percent in secondary ones in 2003. Through statewide enforcement/education efforts such as the Buckle Up Florida/Click It or Ticket campaign, Florida has shown an overall increase in seat belt usage rates from 59 percent in 1999 to 76.3 percent in 2004. As of January 23, 2006 Florida's safety belt usage rate was 73.9 percent. Research has found that lap/shoulder belts, when used properly, reduce the risk of fatal injury to front seat passenger car occupants by 45 percent and the risk of moderate-to-critical injury by 50 percent (for occupants of light trucks, 60 percent and 65 percent, respectively).

The SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act) is the current federal transportation act and includes a federal grant program[2] that encourages states to raise safety belt usage. In order to qualify for this program, a state must enact a primary safety belt law, or achieve 85 percent safety belt usage for two consecutive years.

Effect of Proposed Changes

HB 97 gives the act the popular name the "Dori Slosberg Safety Belt Law" and amends the Florida Safety Belt Law to provide for primary enforcement for all drivers. A law enforcement officer would be authorized to stop a motorist and issue a citation for a safety belt violation upon reasonable suspicion that the driver, any passenger under the age of 18 years, or any passenger in the front seat who is 18 years of age or older, is not restrained. A person violating this provision would be cited for a nonmoving violation, punishable by a $30 fine plus applicable fees and court costs. The fees and court costs vary from county to county, but the total paid for each citation would range from $68.50 to $89.50.

If Florida enacted a primary safety belt enforcement law, National Highway Traffic Safety Administration (NHTSA) studies forecast that 192 lives would be saved, 2,792 serious injuries would be prevented, and over $589 million in economic costs would be saved annually. Also, if Florida enacts a primary safety belt law, it will be eligible to receive a one-time grant of $35.5 million from the SAFETEA-LU safety belt incentive program.

C. SECTION DIRECTORY:

Section 1. Gives the act the popular name the "Dori Slosberg Safety Belt Law."

Section 2. Amends s. 316.614, F.S., to provide for primary enforcement of the safety belt law.

Section 3. Provides that the act shall take effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

[2] 23 U.S.C. 406.

2. Expenditures:

   See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS section.

D. FISCAL COMMENTS:

Enforcement Impacts

Primary enforcement of some safety belt violations may result in the issuance of an increased number of citations, and the assessment of additional traffic penalties and court costs. However, because it is impossible to forecast how many additional violations will occur and be cited, the fiscal impact on state and local government is unknown.

Safety Impacts

To the extent that the bill increases safety belt usage in Florida, crash-related injuries and deaths could be reduced thereby decreasing associated medical and insurance costs. NHTSA studies forecast that 192 lives would be saved, 2,792 serious injuries would be prevented, and over $589 million in economic costs would be saved annually, if a primary safety belt enforcement law were enacted.

Federal Funds Issues

Section 157 in Title 23, of the United States Code as established by the previous federal transportation act authorized incentive funds for Federal Fiscal Years (FFY) 1999 through 2003. These incentive funds were awarded annually to states whose seat belt use rates for a given year either exceeded the national average or exceeded the state's highest achieved seat belt usage rate during certain designated previous years.

Through statewide enforcement and education efforts under the Buckle Up Florida/Click It or Ticket campaign, administered by the Florida Department of Transportation (FDOT) Safety Office, Florida had an overall increase in seat belt usage rates from 59 percent in 1999 to 76.3 percent in 2004. This enabled the state to receive Section 157 incentive funds in FFY 2002 ($1,255,600) and FFY 2003 ($2,863,600). FDOT has used these funds for enhancing the Buckle Up Florida/Click It or Ticket Campaign to help insure continued seat belt usage increases.

The SAFETEA-LU is the current federal transportation act and includes a federal grant program[3] that encourages states to raise safety belt usage. In order to qualify for this program, a state must enact a primary safety belt law, or achieve 85 percent safety belt usage for two consecutive years. As of January 23, 2006 Florida's safety belt usage rate was 73.9 percent. This is a decline from 76.3 percent in 2004. According to the National Highway Traffic Safety Administration of the U.S. Department of

[3] 23 U.S.C. 406.

Transportation,[4] if Florida enacts a primary safety belt law it will be eligible to receive a one-time federal grant of $35.5 million from the safety belt incentive program contained in SAFETEA-LU with no requirement for a state match. The grant funds could be used for any highway safety related purpose including highway safety infrastructure improvements.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

HB 97 does not require any grant or exercise of rule-making authority to implement its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[4] Letter from Ms. Jacqualine Glassman, Acting Administrator, NHTSA, dated January 23, 2006, on file with House Transportation Committee.

A bill to be entitled

An act relating to safety belt law enforcement; creating the Dori Slosberg Safety Belt Law; amending s. 316.614, F.S.; deleting requirement for enforcement of the Florida Safety Belt Law as a secondary action; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Dori Slosberg Safety Belt Law."

Section 2. Subsection (8) of section 316.614, Florida Statutes, is amended to read:

316.614 Safety belt usage.--

(8) Any person who violates the provisions of this section commits a nonmoving violation, punishable as provided in chapter 318. ~~However, except for violations of s. 316.613 and paragraph (4)(a), enforcement of this section by state or local law enforcement agencies must be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of another section of this chapter, chapter 320, or chapter 322.~~

Section 3. This act shall take effect October 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0097**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Jennings offered the following:

Amendment (with title amendment)

Between lines 22 and 23 insert:

Section 2. By January 1, 2006, each law enforcement agency in this state shall adopt departmental policy to prohibit the practice of racial profiling. When a law enforcement officer issues a citation for a violation of this section, the law enforcement officer must record the race, and ethnicity of the violator. All law enforcement agencies must maintain such information and forward the information to the department in a form and manner determined by the department. The department shall collect this information by jurisdiction and annually report the data to the Governor, President of the Senate, and Speaker of the House of Representatives. The report must show separate statewide totals for Florida's county sheriffs, municipal law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies.

Amendment No. (for drafter's use only)

========== T I T L E A M E N D M E N T ==========

Remove line 5, and insert:

Safety Belt Law as a secondary action; requiring law enforcement agencies to adopt a racial profiling policy; providing for the collection and reporting of information; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 683 CS Growth Management
SPONSOR(S): Traviesa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N, w/CS	Strickland	Hamby
2) Growth Management Committee	9 Y, 0 N, w/CS	Strickland	Grayson
3) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

HB 683 w/CS makes several changes to existing law governing developments of regional impact (DRI). The bill:

- Makes revisions to current statutory law relating to a binding letter determination made by the Department of Community Affairs (DCA);
- Makes various revisions and additions to the existing statutory law pertaining to development orders and permits issued by local governments;
- Revises the definition of an "essentially built-out development;"
- Provides bonuses for a developer providing a certain level of affordable housing;
- Revises the criteria under which a proposed change is presumed to create a substantial deviation requiring further review;
- Requires that notice of certain changes be given to DCA, the appropriate regional planning agency, and local government, and requires that a memorandum of notice of certain changes be filed with the clerk of court;
- Revises the period of time for notice and a public hearing after a change to a development order;
- Revises statutory exemptions to the DRI process;
- Expressly removes marina and port facilities from DRI review;
- Revises how certain statewide guidelines and standards are applied to determine whether a development must undergo DRI review;
- Revises existing law pertaining to consistency challenges made to a DRI development order;
- Revises the vested rights and duties as they relate to provisions of this bill; and
- Amends the legislative findings and the definition of "recreational and commercial working waterfronts."

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill streamlines aspects of the development of regional impact (DRI) process, thereby reducing responsibilities for governmental and private organizations.

Safeguard individual liberty - The bill reduces government oversight of some activities presently reviewed as DRIs, and thereby increases the options of individuals regarding the conduct of their own affairs.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. For those land uses that are subject to review, numerical threshold guidelines are identified in s. 380.0651, F.S., and Chapter 28-24, F.A.C. Examples of the land uses for which guidelines are established include:

- airports; attractions and recreational facilities;
- industrial plants and industrial parks;
- office parks;
- port facilities, including marinas;
- hotel or motel development;
- retail and service development;
- recreational vehicle development;
- multi-use development;
- residential development; and
- schools.

The DRI review process involves the regional review of proposed developments meeting the defined thresholds by the regional planning councils to determine the extent to which:

- The development will have a favorable or unfavorable impact on state or regional resources or facilities;

- The development will significantly impact adjacent jurisdictions; and

- The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

Percentage thresholds, as defined in 380.06(2)(d), F.S., are applied to the guidelines and standards. These fixed thresholds provide that if a development is at or below 100 percent of all numerical thresholds in the guidelines, the project is not required to undergo DRI review. If a development is at or above 120 percent of the guidelines, it is required to undergo DRI review. A rebuttable presumption is established whereby a development at 100 of a numerical threshold, or between 100-120 percent of a numerical threshold, is presumed to require DRI review.

If there is a concern over whether a particular development is subject to DRI review, the developer may request a determination from the DCA. DCA or the local government with jurisdiction over the land to be used for the proposed development may require a developer to obtain a binding letter of interpretation if the development is at a presumptive threshold or up to 20 percent above the established numerical threshold. Any other local government may petition DCA to require a binding letter of interpretation for a development located in an adjacent jurisdiction if the petition contains sufficient facts to find that the development as proposed constitutes a DRI.

Under s. 380.06(19), F.S., any proposed change to a previously approved DRI which creates a reasonable likelihood of additional regional impact or any type of regional impact, resulting from a change not previously reviewed by the regional planning council, constitutes a "substantial deviation" that subjects the development to further DRI review and entry of a new or amended local development order. Section 380.06(19), F.S., provides that a proposed change to a previously approved DRI which, either individually or cumulatively with other changes, exceeds specified criteria constitutes a substantial deviation and is subject to further DRI review.

The extension of the date of buildout of a development, or any phase thereof, of 5 years or more but less than 7 years is presumed not to create a substantial deviation. However, the extension of buildout by 7 or more years is presumed to create a substantial deviation and is subject to further DRI review. However, this presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government. When calculating whether a buildout date has been exceeded, time is tolled during the pendency of administrative or judicial proceedings relating to development permits.

Marinas

In 2002, the Legislature created an exemption for marinas from DRI review. This exempting occurs if the local government has adopted a boating facility siting plan or policy within its comprehensive plan.

The DCA, in cooperation with the Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission, makes available a best practices guide to assist local governments in developing boating facility siting plans. A boating facility siting plan provides a framework for identifying locations that can accommodate boating interests while protecting manatees, seagrass beds, and other marine resources.

Multiuse Developments

Section 380.06(2)(e), F.S., increases the applicable guidelines and standards by 100 percent for multiuse projects in urban central business districts and regional activity centers if the local government's comprehensive plan is in compliance with part II of ch. 163, F.S., and if one land use in the mulituse development is residential and amounts to not less than 35 percent of the jurisdiction's applicable residential threshold. An urban central business district is defined as the urban core area of a municipality with a population of 25,000 or greater which is located within an urbanized area as identified in the 1990 census. Such a district must contain high intensity, high density multi-use development which includes "retail, office, cultural, recreational and entertainment facilities, hotels or motels, or other appropriate industrial activities." A regional activity center is defined as a compact, high intensity, high density multi-use area that is designated appropriate for intensive growth by the local government. It includes the same uses as an urban central business district.

Currently, the individual DRI threshold is increased by 50 percent within an urban central business district or a regional activity center. However, the multiuse DRI threshold within such a district or center enjoys a 100 percent increase.

Development Order Appeals

Currently there are two mechanisms by which an appeal may be sought on the grounds that a development order (DO) rendered for a DRI is inconsistent with the comprehensive plan adopted by the local government. The first is to appeal a development order under s.163.3215, F.S., within the circuit court with proper jurisdiction. The second is to appeal a development order under s. 380.06, F.S., to the Florida Land and Water Adjudicatory Commission (FLWAC).

Under existing law (s. 163.3215, F.S.), an "aggrieved or adversely affected party" may bring an appeal to challenge local government's issuance of a development order (an order of local government granting, denying, or granting with conditions, an application for a development permit) as not being consistent with the local comprehensive plan. Appeals of this type are filed in the local circuit court. Existing law also contains another opportunity to appeal the local government's issuance of a development order. Under another section of existing law (s. 380.07, F.S.) the owner, the developer, or the DCA may appeal a development order that relates to a DRI to the Florida Land and Water Adjudicatory Commission (FLWAC). Further, it is possible for the same development order to be challenged in both the circuit court and FLWAC. In such instances, the two challenge processes may lead to different results causing confusion for all the affected interests.

Effect of Proposed Change

HB 683 w/CS amends existing law and creates new law related to DRI. A DRI by definition is "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Specifically, the bill establishes:

- A process for review of DRIs and for the issuance of a DO which details specifics regarding the scope and timing of the development and serves as the authority to commence and complete the development;
- What constitutes a "substantial deviation" of the DO which would necessitate additional review;
- Statutory exemptions that prevent DRI review;
- Statewide guidelines and standards for determining what activities require DRI review; and
- Vested rights and associated duties of the respective parties.

Details of the changes to existing law are outlined below.

Binding Letter and Development Order

The bill amends existing law to allow either a developer or the local government having jurisdiction over a DRI to ask DCA to determine whether the local government may issue permits for development subsequent to the buildout date. The determination may take the form of a formal binding letter or an informal clearance letter. Specifically, the determination is whether the DRI meets criteria newly created in s. 380.06(15)(g)3, F.S., which provides that:

- The developer has satisfied all mitigation required in the DO.
- The development is in compliance with all applicable terms and conditions of the DO, except the buildout date; and
- The amount of remaining proposed development is less than 20 percent of any applicable DRI threshold.

This new feature provides for limited development beyond the DRI buildout date when the existing and remaining development meets the criteria.

The bill allows a single-family residential portion of a project to be considered "essentially built out" if:

- All the infrastructure and horizontal development has been completed;
- At least 50 percent of the dwelling units have been completed; and
- More than 80 percent of the lots have been conveyed to third party buyers or to individual builders who own no more than 40 lots at the time of the determination.

The bill allows mobile home portions of a development to be considered "essentially built out" if:

- All the infrastructure and horizontal development has been completed, and
- At least 50 percent of the lots are leased to individual mobile home owners.

The bill amends the following statutory provisions relating to DOs:

- Termination date – Existing law provides that the local government's DO specify a "termination date" before which certain land use changes would not apply to the approved DRI unless a substantial deviation occurs. The bill amends existing law to provide that the DO may not specify that date as being earlier than the "buildout date." s. 380.06(15)(c)3., F.S.
- Notice of proposed change – Existing law provides that the DO may specify the types of changes which would require a substantial deviation determination. The bill amends existing law by extending that language to include a "notice of proposed change." s. 380.06(15)(c)5., F.S.
- Competitive bidding or competitive negotiation – Existing law provides that a local government may require competitive bidding or competitive negotiation where construction or expansion of a public facility is conducted by a nongovernmental developer as a condition of a DO or to mitigate impacts reasonably attributable to the development. The bill amends existing law by removing that discretion and thus disallows local government from requiring competitive bidding. s. 380.06(15)(d)4., F.S.

Substantial Deviations

The bill amends existing law pertaining to the percentage and unit thresholds and provides for a presumption that the activities trigger DRI review. Existing law strictly requires DRI review when percentage and unit thresholds are met or exceeded. The amended percentage and unit thresholds follow.

- Attraction or recreational facility - The bill amends the thresholds to the greater of an increase of 10 percent or 330 parking spaces (from 5 percent or 300 spaces), or an increase to the greater of 10 percent or 1,100 spectators.
- Runway or terminal facility - The bill does not amend the threshold concerning a "runway or terminal facility."
- Hospitals – The bill deletes the threshold for hospitals.

- Industrial – The bill amends the threshold to the greater of 10 percent or 35 acres (from 5 percent or 32 acres).

- Mines - The bill amends the threshold to the greater of an increase in the average annual acreage mined by 10 percent or 11acres (from 5 percent or 10 acres) or to the greater of an increase in the average daily water consumption by a mining operation by 10 percent or 330,000 gallons (from 5 percent or 300,000 gallons). It is further amended to the greater of an increase of the size of the mine by 10 percent or 825 acres (from 5 percent or 750 acres).

- Office development – The bill amends the threshold to the greater of an increase in land area by 10 percent (from 5 percent) or an increase of gross floor area by 10 percent (from 5 percent) or 66,000 square feet (from 60,000).

- Marina development – The bill creates a threshold to the greater of 10 percent of wet storage or 30 watercraft slips; or to the greater of 20 percent of wet storage or 60 watercraft slips in an area identified by a local government in a boat facility siting plan as an appropriate site for additional marina development.

- Storage capacity for chemical or petroleum storage facilities – The bill deletes the threshold for these facilities.

- Waterport or wet storage – The bill deletes the threshold for waterport or wet storage.

- Dwelling units – The bill amends the threshold to the greater of 10 percent or 55 dwelling units (from 5 percent or 50 dwelling units).

- Workforce housing dwelling units – The bill creates a threshold to the greater of 50 percent or 200 units, provided that 15 percent of the increase in the number of dwelling units is restricted to the construction of workforce housing (affordable to a person who earns less than 150 percent of the area median income).

- Commercial development – The bill amends the threshold to the greater of 55,000 square feet (from 50,000 square feet) of gross floor area; or of parking spaces for customers for 330 cars (from 300 cars); or a 10 percent increase (from 5 percent increase) of either of these.

- Hotel or motel rooms – The bill amends the threshold to the greater of an increase in hotel or motel rooms by 10 percent or 83 rooms (from 5 percent or 75 units).

- Recreational vehicle park area – The bill amends the threshold to the lesser of an increase in a recreational vehicle park area by 10 percent (from 5 percent) or 110 vehicle spaces.

- Approved multiuse DRI – The bill amends the threshold to 110 percent of the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria.

The bill amends existing law in the following ways relating to presumptions concerning substantial deviations:

- Presumption of a substantial deviation – A presumption of substantial deviation is created by an extension of the buildout date of more than 7 years (from 7 or more years).

- Presumption of no substantial deviation – A presumption of no substantial deviation is created by an extension of the buildout date of more than 5 years (from 5 or more years), but less than 7 years.

- No substantial deviation - An extension of the buildout date of 5 years or less (from less than 5 years) is not a substantial deviation.

The bill establishes that the following changes do not constitute substantial deviations:

- Protected lands -
    - The bill provides that changes that modify boundaries due to science-based refinement of such areas by survey, habitat evaluation, other recognized assessment methodology, or an environmental assessment.
    - The bill provides that this only applies to areas previously set aside for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State.

The bill amends existing law to provide for notice prior to implementation of the types of non substantial deviation changes addressed above. The specific requirements are as follows:

- Notice – The bill does not require the filing of a notice of proposed change, but, requires the local government to follow the locally adopted procedures relating to amending a development order.
- Appellate procedure: After adoption, the local government is required to submit the amendment to DCA. DCA may then appeal under certain conditions if it believes the change creates a reasonable likelihood of new or additional regional impacts.

The bill amends existing law as it pertains to proposed changes that require further DRI review as follows:

- Scope of mitigation – The bill amends existing law to limit the scope of mitigation required as a result of a proposed change to a DO. The amended language limits such new mitigation to the individual and cumulative impacts caused only by the proposed change.
- Continuance of development – The bill amends existing law by providing that development within the DRI may continue during the DRI review in those portions of the development which are not "directly" affected by the proposed change.

Statutory Exemptions

The bill amends current DRI exemptions providing that if a use is exempt from review as a DRI under the following circumstances or any other paragraphs under this subsection, but is a part of a larger project that is subject to review as a DRI, the impact of the exempt use must be included in the review of the larger project.

- Hospitals – The bill removes the 100 bed capacity limitation; thus providing that all hospitals are exempt.
- Steam or solar electrical generating facility - The bill removes the exception of a steam or solar electrical generating facility of less than 50 megawatts in capacity attached to a DRI from the exemption for proposed electrical transmission lines or electrical power plants.

- Adjacent jurisdictions – The bill amends existing law which allows a DRI exemption for certain proposed development within an urban service area. The amendment changes one of the criteria for the exemption that requires a binding agreement with adjacent jurisdictions and the Department of Transportation (DOT) regarding impacts on state and regional transportation facilities. The amendment changes the requirement so that the binding agreement must be entered into with jurisdictions "that would be impacted" and DOT.

The bill creates five new exemptions to existing law as follows:

- Self storage warehousing – The bill provides an exemption for any self-storage warehousing that does not allow retail or other services.

- Nursing home or assisted living facility – The bill provides an exemption for any proposed nursing home or assisted living facility.

- Airport master plan – The bill provides an exemption for any development identified in an airport master plan and adopted into the comprehensive plan.

- Campus master plan – The bill provides an exemption for any development identified in a campus master plan and adopted pursuant to s. 1013.30, F.S. (related to campus master plans and campus DOs).

- Specific area plan – The bill provides an exemption for any development in a specific area plan which is prepared pursuant to s. 163.3245, F.S, (related to optional sector plans) and adopted into the comprehensive plan.

- Petroleum Storage Facility – The bill removes the requirement that a proposed facility for the storage of any petroleum product or expansion of an existing facility be consistent with the local comprehensive plan and with a comprehensive port master plan.

- Waterport and Marina Development – The bill provides an express exemption of waterport; and marina development and all criteria pertaining to the current limited exemption is deleted to conform to these changes in the bill.

Additional new language provides that if a use is exempt from DRI review but is part of a larger project that is subject to DRI review, then the exempt use must be included in review of the larger project.

Partial Exemptions

The bill creates new law limiting the requirement that three exemptions only will apply if the local government has entered into a binding agreement with DOT and jurisdictions "that would be impacted."

- Urban service boundaries (USB) – The bill provides that if the binding agreement is not entered into within 12 months after establishment of the USB, then DRI review shall address transportation impact only.

- Rural land stewardship – The bill provides that if the binding agreement is not entered into within 12 months after establishment of the USB, then DRI review shall address transportation impact only.

- Urban infill and redevelopment area – The bill provides that if the binding agreement is not entered into within 12 months after the designation of the area or July 1, 2007, whichever occurs later, then DRI review shall address transportation impacts only.

- Notification to DCA - The bill provides that notification must be submitted by the local government to DCA stating that the local government either does not wish, or has not been able, to enter into a binding agreement within the 12 month period, after which, the DRI within the USB or urban infill and redevelopment area must address transportation impacts only.

Statewide Guidelines and Standards

The bill amends existing law addressing how certain statewide guidelines and standards are applied to determine whether a development must undergo DRI review.

- Waterport and Marina Development – The bill expressly provides that waterport and marina development, including dry storage facilities, are exempt from DRI review. All criteria pertaining to the current limited exemption is deleted to conform to these changes in the bill.

- Workforce housing – The bill creates an increased threshold (increased by 50 percent) for residential development and the residential component for multiuse development when the developer demonstrates that at least 15 percent of the residential dwelling units will be dedicated to housing that is affordable to a person who earns less than 150 percent of the area median income, i.e., workforce housing.

Florida Land and Water Adjudicatory Commission (FLWAC)

The bill amends existing law related to challenges of a DO based on consistency to provide the following:

- Consistency challenges – The bill allows the appeal of a DO to FLWAC by DCA to include consistency with the local comprehensive plan. If a challenge to the DO relating to the DRI has been filed under s. 163.3215, F.S., and notice is served on DCA, then the DCA must intervene in that pending proceeding and raise its consistency issues within 30 days after service. Further, DCA must dismiss the consistency issues from its DO appeal to the FLWAC. The filing of the petition stays the effectiveness of the DO until after completion of the appeal process.

Vested Rights and Duties

The bill amends existing law related to the vested rights of DRIs. The amendment makes changes as follows:

- The bill provides that vested rights are not abridged or modified by a change in the DRI guidelines and standards.

- The bill revises the procedures affecting a DRI which is no longer required to undergo DRI review because of a change in the guidelines or standards, or because of a reduction that lowers the development below the thresholds.

- The bill provides that the local government having jurisdiction shall rescind the DO upon a showing by the developer or the landowner that all required mitigation related to the amount that existed on the date of rescission has been completed.

- The bill provides that unless the developer follows this procedure, the DRI continues to be governed by, and may be completed in reliance upon, the DO.

- The bill provides that if an application for development approval, or a notification of proposed change, is pending on the effective date of a change to the guidelines and standards, then the

development may elect to continue the DRI review which is governed by the vested rights provision.

Recreational and Commercial Working Waterfronts

The bill amends existing law relating to the legislative findings and the definition of "recreational and commercial working waterfront" in the following ways:

- Legislative findings – The bill amends the findings as follows:
  - The bill expands the statement of important state interest to include "other recreation access" to the state's navigable waters.
  - The bill adds tourism, with a $57 billion annual economic impact, as a vital industry to be protected.
  - The bill adds a statement that by expanding the importance of water access beyond recreational users to include "tourist."
  - The bill adds "public lodging establishments" to those water-dependent support facilities as important state interests to be maintained.
- Definition of "recreational and commercial working waterfront" – The bill adds "water-dependent recreational activities including public lodging establishments as defined in chapter 509" to the definition.

C. SECTION DIRECTORY:

Section 1: Amends s. 163.3177, F.S., relating to required and optional elements of comprehensive plans.

Section 2: Amends s. 163.3180, F.S., relating to concurrency.

Section 3: Amends s. 197.303 relating to ad valorem tax deferral for recreational and commercial working waterfront properties.

Section 4: Amends s. 342.07, F.S., relating to recreational and commercial waterfronts.

Section 5: Creates s. 373.4132, F.S., relating to permitting process for dry storage facilities.

Section 6: Amends ss. 380.06(2)(d), (7)(b), (15), (19), and (24), F.S., relating to developments of regional impact (DRI).

Section 7: Amends s. 380.0651, F.S., relating to statewide guidelines and standards for determining what development activities must undergo DRI review.

Section 8: Creates s. 380.07, F.S., relating to the Florida Land and Water Adjudicatory Commission.

Section 9: Amends s. 380.115, F.S., relating to vested rights and duties of DRI projects as it relates to the provisions of this bill taking effect.

Section 10: Amends s. 403.813, F.S., relating to exceptions to the required permits at district centers.

Section 11: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The development community would benefit from increased thresholds and expanded exemptions from the DRI review process.

D. FISCAL COMMENTS:

No additional fiscal comments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

There do not appear to be other constitutional issues with the bill.

B. RULE-MAKING AUTHORITY:

This bill does not include any rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There do not appear to be any drafting issues.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Local Government Council adopted a strike-all amendment. The strike-all amendment made changes to the original filed bill as outlined below.

- Biennial Reports:
  - Removes the requirement to submit biennial rather than annual reports.
  - Removes the penalty for failure to submit a biennial report.
- Rulemaking: Removes the requirement for DCA to initiate rulemaking by August 1, 2006 to revise the DRI review process.
- Substantial Deviations:
  - Thresholds: Lowers, across the board, the substantial deviation thresholds (which are still slightly higher than those in existing law).

        - Doubles the threshold for marinas under certain circumstances
    - Triggering Time Periods: Changes the time periods relative to triggering a substantial deviation:
        - More than 7 years creates a presumption of a substantial deviation.
        - More than 5 years, but less than 7 years, creates a presumption of no substantial deviation.
        - Five years or less does not constitute a substantial deviation.
    - Activities That Do No Trigger: Removes "internal utility locations" and "internal location of public facilities" as activities that expressly do not constitute substantial deviations.
    - Workforce Housing: Creates a substantial deviation threshold bonus for the provision of workforce housing.
- DRI Exemptions:
    - Restores the term "waterport" in conjunction with marinas as relates to certain exemptions.
    - Removes exceptions from transportation concurrency as a new exemption to DRI review.
- Urban Service Area Binding Agreement:
    - Substitutes language describing what constitutes a statutory exemption; replacing the phrase "jurisdictions that would be impacted" for the phrase "contiguous jurisdiction."
    - Establishes that if local government fails to enter into a binding agreement within 12 months, then the DRI review is limited to transportation issues only. Further, local government must report to DCA such failure to enter a binding agreement.
- Statewide Guidelines and Standards for Determining Whether a Particular Activity Undergoes DRI Review:
    - Restores to existing statutory language the guidelines and standards related to: airports; attractions & recreation facilities; schools; and aggregation.
    - Restores "port facility" in conjunction with marinas related to statewide guidelines and standards.
    - Reestablishes existing law related to spaceport launch facilities and concurrency.
    - Workforce Housing: Creates a bonus against the applicable guidelines for the provision of workforce housing.
- Consistency Challenges: Further revises procedures for consistency challenges to FLWAC.
- Binding Letter:
    - Authorizes local governments in addition to the developer to request a binding letter.
    - Expands DCA's authority to issue a clearance letter to determine whether the amount of development that remains to be built will constitute "essentially built- out."
- Working Waterfront: Adds tourism and its economic impact to the legislative findings; and adds "public lodging establishments" and "recreational activities"; to existing law relating to working waterfronts.

On March 21, 2006, the Growth Management Committee adopted a strike-all amendment. The strike-all amendment made changes to the bill as outlined below.

- "Essentially built out:" Provides additional criteria for a development to be considered "essentially built out."

- Substantial Deviation:
    - Notice: Provides that a notice for changes that do not rise to the level of substantial deviation do not require a "notice of proposed change," but do require an application to the local government to amend the DO in accordance with the local government's procedures.
    - Removal of Marinas: Conforms to the removal of marinas from the DRI process by deleting the language pertaining to a substantial deviation triggering further DRI review.
    - Science Based Refinements:
        - Provides that the survey, habitat evaluation, or assessment must occur prior to the time a conservation easement protecting the lands is recorded and must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final DO.

- Expands the criteria for which for which land is protected to include the DO for the protection of species protected by 16 U.S.C. ss. 668a-668d.

- DRI Exemptions:
  - Petroleum storage tanks: Removes the requirement that to be exempt from DRI review, any petroleum storage facility must be consistent with a local comprehensive plan or comprehensive port master plan.
  - Waterports and Marina Development: Removes the criteria for the exemption of waterport and marina development from DRI Review to conform to an express exemption of waterport and marina development, including dry storage facilities (provided for in this act).
  - Rural Land Stewardship: Provides for a DRI review of transportation impacts only if the required binding agreement with those jurisdictions impacted and DOT is not reached within the required 12 months (identical to the provisions for urban infill and redevelopment areas & urban service boundaries).

- Statewide Guidelines and Standards for Determining Whether a Particular Activity Undergoes DRI Review:
  - Port Facilities: Removes all standards and guidelines for determining whether port facilities should undergo DRI review to conform to an express exemption from DRI review for waterport and marina development, including dry storage facilities (provided for in this bill).

- Vested Rights and Duties: Provides that any proposed changes to developments that continue to be governed by a DO shall be evaluated by s. 380.06 (19), F.S., as it existed prior to the changes of the guidelines and standards provided for by this bill except that all percentage criteria shall be doubled and all other criteria shall be increased by 10 percent.

- Permitting of Dry Storage: Provides criteria for the requirement of a permit for the construction, alteration, operation, maintenance, abandonment or removal of a dry storage facility with 10 or more vessels.

- Docks: Provides that private docks of 1,000 sq. ft. or less of over-water surface area in artificially created waterways do not require a permit.

- Adoption of a boating facility siting plan: Provides encouragement for affected local governments to adopt a boating facility siting plan and provides possible eligibility for assistance with creation of the plan from the Florida Coastal Management Program.

- Working Waterfront: Conforms language to reflect changes made by this act relating to working waterfronts.

- Workforce Housing:
  - Substantial Deviation: Provides for an increase in the thresholds for creating a substantial deviation of dwelling units that include affordable housing. Specifically, the amendment provides that the following does not constitute a substantial deviation:
    - To the greater of 50 percent (from 15 percent) or 200 units (from 100 units), provided that 15 percent (from 20 percent) of the increase in the number of dwelling units is restricted to the construction of workforce housing (affordable to a person who earns less than 150 percent (from 120 percent) of the area median income)
    - An increase in any number of residential units where all the residential dwelling units are dedicated to workforce housing (150 percent of area median income).
  - Statewide Guidelines and Standards: Provides that the applicable guidelines for residential development and the residential component for multiuse development shall be increased by 50 percent where the developer demonstrates that at least 15 percent of the residential dwelling units will be dedicated to workforce housing (150 percent of the area median income).

CHAMBER ACTION

The Growth Management Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to growth management; amending s. 163.3177, F.S.; encouraging local governments to adopt boating facility siting plans; providing criteria and exemptions for such plans; authorizing assistance for the development of such plans; amending s. 163.3180, F.S.; conforming a cross-reference; amending s. 197.303, F.S.; revising the criteria for ad valorem tax deferral for working waterfront properties; including public lodging establishments in the description of working waterfront properties; amending s. 342.07, F.S.; adding recreational activities as an important state interest; including public lodging establishments within the definition of the term "recreational and commercial working waterfront"; creating s. 373.4132, F.S.; directing water management district governing boards and the Department of Environmental Protection to require permits for certain activities relating to certain dry storage facilities; providing criteria for application of such permits;

preserving regulatory authority for the department and governing boards; amending s. 380.06, F.S.; providing for the state land planning agency to determine the amount of development that remains to be built in certain circumstances; specifying certain requirements for a development order; revising the circumstances in which a local government may issue permits for development subsequent to the buildout date; revising the definition of an essentially built-out development; revising the criteria under which a proposed change constitutes a substantial deviation; clarifying the criteria under which the extension of a buildout date is presumed to create a substantial deviation; requiring that notice of any change to certain set-aside areas be submitted to the local government; requiring that notice of certain changes be given to the state land planning agency, regional planning agency, and local government; revising the statutory exemptions from development-of-regional-impact review for certain facilities; removing waterport and marina developments from development-of-regional-impact review; providing statutory exemptions and partial statutory exemptions for the development of certain facilities; providing that the impacts from an exempt use that will be part of a larger project be included in the development-of-regional-impact review of the larger project; amending s. 380.0651, F.S.; revising the statewide guidelines and standards for development-of-regional-impact review of office developments; deleting such guidelines and

standards for port facilities; providing such guidelines and standards for workforce housing; amending s. 380.07, F.S.; revising the appellate procedures for development orders within a development of regional impact to the Florida Land and Water Adjudicatory Commission; amending s. 380.115, F.S.; providing that a change in a development-of-regional-impact guideline and standard does not abridge or modify any vested right or duty under a development order; providing a process for the rescission of a development order by the local government in certain circumstances; providing an exemption for certain applications for development approval and notices of proposed changes; amending s. 403.813, F.S.; revising permitting exceptions for the construction of private docks in certain waterways; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (g) of subsection (6) of section 163.3177, Florida Statutes, is amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.--

(6) In addition to the requirements of subsections (1)-(5) and (12), the comprehensive plan shall include the following elements:

(g)1. For those units of local government identified in s. 380.24, a coastal management element, appropriately related to the particular requirements of paragraphs (d) and (e) and

meeting the requirements of s. 163.3178(2) and (3). The coastal management element shall set forth the policies that shall guide the local government's decisions and program implementation with respect to the following objectives:

a.~~1.~~ Maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.

b.~~2.~~ Continued existence of viable populations of all species of wildlife and marine life.

c.~~3.~~ The orderly and balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.

d.~~4.~~ Avoidance of irreversible and irretrievable loss of coastal zone resources.

e.~~5.~~ Ecological planning principles and assumptions to be used in the determination of suitability and extent of permitted development.

f.~~6.~~ Proposed management and regulatory techniques.

g.~~7.~~ Limitation of public expenditures that subsidize development in high-hazard coastal areas.

h.~~8.~~ Protection of human life against the effects of natural disasters.

i.~~9.~~ The orderly development, maintenance, and use of ports identified in s. 403.021(9) to facilitate deepwater commercial navigation and other related activities.

j.~~10.~~ Preservation, including sensitive adaptive use of historic and archaeological resources.

2. As part of this element, affected local governments are encouraged to adopt a boating facility siting plan or policy that includes applicable criteria and considers such factors as natural resources, manatee protection needs, and recreation and economic demands as generally outlined in the Boat Facility Siting Guide dated August 2000 and prepared by the Bureau of Protected Species Management of the Fish and Wildlife Conservation Commission. A comprehensive plan that adopts a boating facility siting plan or policy is exempt from the provisions of s. 163.3187(1). Local governments that wish to adopt a boating facility siting plan or policy may be eligible for assistance with the development of a plan or policy through the Florida Coastal Management Program.

Section 2. Paragraph (a) of subsection (12) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.--

(12) When authorized by a local comprehensive plan, a multiuse development of regional impact may satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06 by payment of a proportionate-share contribution for local and regionally significant traffic impacts, if:

(a) The development of regional impact meets or exceeds the guidelines and standards of s. 380.0651(3)(h) ~~(i)~~ and rule 28-24.032(2), Florida Administrative Code, and includes a residential component that contains at least 100 residential

dwelling units or 15 percent of the applicable residential guideline and standard, whichever is greater;

The proportionate-share contribution may be applied to any transportation facility to satisfy the provisions of this subsection and the local comprehensive plan, but, for the purposes of this subsection, the amount of the proportionate-share contribution shall be calculated based upon the cumulative number of trips from the proposed development expected to reach roadways during the peak hour from the complete buildout of a stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain the adopted level of service, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service. For purposes of this subsection, "construction cost" includes all associated costs of the improvement.

Section 3. Subsection (3) of section 197.303, Florida Statutes, is amended to read:

197.303 Ad valorem tax deferral for recreational and commercial working waterfront properties.--

(3) The ordinance shall designate the <u>percentage or amount of the deferral and the</u> type and location of working waterfront property<u>, including the type of public lodging establishments,</u> for which deferrals may be granted, which may include any property meeting the provisions of s. 342.07(2), which property

may be further required to be located within a particular geographic area or areas of the county or municipality.

Section 4. Section 342.07, Florida Statutes, is amended to read:

342.07 Recreational and commercial working waterfronts; legislative findings; definitions.--

(1) The Legislature recognizes that there is an important state interest in facilitating boating and other recreational access to the state's navigable waters. This access is vital to tourists and recreational users and the marine industry in the state, to maintaining or enhancing the $57 billion economic impact of tourism and the $14 billion economic impact of boating in the state annually, and to ensuring continued access to all residents and visitors to the navigable waters of the state. The Legislature recognizes that there is an important state interest in maintaining viable water-dependent support facilities, such as public lodging establishments and boat hauling and repairing and commercial fishing facilities, and in maintaining the availability of public access to the navigable waters of the state. The Legislature further recognizes that the waterways of the state are important for engaging in commerce and the transportation of goods and people upon such waterways and that such commerce and transportation is not feasible unless there is access to and from the navigable waters of the state through recreational and commercial working waterfronts.

(2) As used in this section, the term "recreational and commercial working waterfront" means a parcel or parcels of real property that provide access for water-dependent commercial and

recreational activities, including public lodging establishments as defined in chapter 509, or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. As used in this section, the term "vessel" has the same meaning as in s. 327.02(37). Seaports are excluded from the definition.

Section 5. Section 373.4132, Florida Statutes, is created to read:

373.4132 Dry storage facility permitting.--The governing board or the department shall require a permit under this part, including s. 373.4145, for the construction, alteration, operation, maintenance, abandonment, or removal of a dry storage facility for 10 or more vessels that is functionally associated with a boat launching area. As part of an applicant's demonstration that such a facility will not be harmful to the water resources and will not be inconsistent with the overall objectives of the district, the governing board or department shall require the applicant to provide reasonable assurance that the secondary impacts from the facility will not cause adverse

impacts to the functions of wetlands and surface waters, including violations of state water quality standards applicable to waters as defined in s. 403.031(13), and will meet the public interest test of s. 373.414(1)(a), including the potential adverse impacts to manatees. Nothing in this section shall affect the authority of the governing board or the department to regulate such secondary impacts under this part for other regulated activities.

Section 6. Paragraph (d) of subsection (2), paragraphs (a) and (i) of subsection (4) and subsections (15), (19), and (24) of section 380.06, Florida Statutes, are amended, and subsection (28) is added to that section, to read:

380.06 Developments of regional impact.--

(2) STATEWIDE GUIDELINES AND STANDARDS.--

(d) The guidelines and standards shall be applied as follows:

1. Fixed thresholds.--

a. A development that is below 100 percent of all numerical thresholds in the guidelines and standards shall not be required to undergo development-of-regional-impact review.

b. A development that is at or above 120 percent of any numerical threshold shall be required to undergo development-of-regional-impact review.

c. Projects certified under s. 403.973 which create at least 100 jobs and meet the criteria of the Office of Tourism, Trade, and Economic Development as to their impact on an area's economy, employment, and prevailing wage and skill levels that are at or below 100 percent of the numerical thresholds for

industrial plants, industrial parks, distribution, warehousing or wholesaling facilities, office development or multiuse projects other than residential, as described in s. 380.0651(3)(c), (d), and (h) ~~(i)~~, are not required to undergo development-of-regional-impact review.

2. Rebuttable presumption.--It shall be presumed that a development that is at 100 percent or between 100 and 120 percent of a numerical threshold shall be required to undergo development-of-regional-impact review.

(4) BINDING LETTER.--

(a) If any developer is in doubt whether his or her proposed development must undergo development-of-regional-impact review under the guidelines and standards, whether his or her rights have vested pursuant to subsection (20), or whether a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (20) would divest such rights, the developer may request a determination from the state land planning agency. The developer or the appropriate local government having jurisdiction may request that the state land planning agency determine whether the amount of development that remains to be built in an approved development of regional impact meets the criteria of subparagraph (15)(g)3.

(i) In response to an inquiry from a developer or the appropriate local government having jurisdiction, the state land planning agency may issue an informal determination in the form of a clearance letter as to whether a development is required to undergo development-of-regional-impact review or whether the

amount of development that remains to be built in an approved development of regional impact meets the criteria of subparagraph (15)(g)3. A clearance letter may be based solely on the information provided by the developer, and the state land planning agency is not required to conduct an investigation of that information. If any material information provided by the developer is incomplete or inaccurate, the clearance letter is not binding upon the state land planning agency. A clearance letter does not constitute final agency action.

(15) LOCAL GOVERNMENT DEVELOPMENT ORDER.--

(a) The appropriate local government shall render a decision on the application within 30 days after the hearing unless an extension is requested by the developer.

(b) When possible, local governments shall issue development orders concurrently with any other local permits or development approvals that may be applicable to the proposed development.

(c) The development order shall include findings of fact and conclusions of law consistent with subsections (13) and (14). The development order:

1. Shall specify the monitoring procedures and the local official responsible for assuring compliance by the developer with the development order.

2. Shall establish compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval or phasing requirements, and shall include a buildout ~~termination~~ date that

reasonably reflects the time anticipated ~~required~~ to complete the development.

3. Shall establish a date until which the local government agrees that the approved development of regional impact shall not be subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred or the development order was based on substantially inaccurate information provided by the developer or that the change is clearly established by local government to be essential to the public health, safety, or welfare. The date established pursuant to this subparagraph shall be no sooner than the buildout date of the project.

4. Shall specify the requirements for the biennial report designated under subsection (18), including the date of submission, parties to whom the report is submitted, and contents of the report, based upon the rules adopted by the state land planning agency. Such rules shall specify the scope of any additional local requirements that may be necessary for the report.

5. May specify the types of changes to the development which shall require submission for a substantial deviation determination or a notice of proposed change under subsection (19).

6. Shall include a legal description of the property.

(d) Conditions of a development order that require a developer to contribute land for a public facility or construct,

expand, or pay for land acquisition or construction or expansion of a public facility, or portion thereof, shall meet the following criteria:

1. The need to construct new facilities or add to the present system of public facilities must be reasonably attributable to the proposed development.

2. Any contribution of funds, land, or public facilities required from the developer shall be comparable to the amount of funds, land, or public facilities that the state or the local government would reasonably expect to expend or provide, based on projected costs of comparable projects, to mitigate the impacts reasonably attributable to the proposed development.

3. Any funds or lands contributed must be expressly designated and used to mitigate impacts reasonably attributable to the proposed development.

4. Construction or expansion of a public facility by a nongovernmental developer as a condition of a development order to mitigate the impacts reasonably attributable to the proposed development is not subject to competitive bidding or competitive negotiation for selection of a contractor or design professional for any part of the construction or design ~~unless required by the local government that issues the development order~~.

(e)1. ~~Effective July 1, 1986,~~ A local government shall not include, as a development order condition for a development of regional impact, any requirement that a developer contribute or pay for land acquisition or construction or expansion of public facilities or portions thereof unless the local government has enacted a local ordinance which requires other development not

subject to this section to contribute its proportionate share of the funds, land, or public facilities necessary to accommodate any impacts having a rational nexus to the proposed development, and the need to construct new facilities or add to the present system of public facilities must be reasonably attributable to the proposed development.

2. A local government shall not approve a development of regional impact that does not make adequate provision for the public facilities needed to accommodate the impacts of the proposed development unless the local government includes in the development order a commitment by the local government to provide these facilities consistently with the development schedule approved in the development order; however, a local government's failure to meet the requirements of subparagraph 1. and this subparagraph shall not preclude the issuance of a development order where adequate provision is made by the developer for the public facilities needed to accommodate the impacts of the proposed development. Any funds or lands contributed by a developer must be expressly designated and used to accommodate impacts reasonably attributable to the proposed development.

3. The Department of Community Affairs and other state and regional agencies involved in the administration and implementation of this act shall cooperate and work with units of local government in preparing and adopting local impact fee and other contribution ordinances.

(f) Notice of the adoption of a development order or the subsequent amendments to an adopted development order shall be

recorded by the developer, in accordance with s. 28.222, with the clerk of the circuit court for each county in which the development is located. The notice shall include a legal description of the property covered by the order and shall state which unit of local government adopted the development order, the date of adoption, the date of adoption of any amendments to the development order, the location where the adopted order with any amendments may be examined, and that the development order constitutes a land development regulation applicable to the property. The recording of this notice shall not constitute a lien, cloud, or encumbrance on real property, or actual or constructive notice of any such lien, cloud, or encumbrance. This paragraph applies only to developments initially approved under this section after July 1, 1980.

(g) A local government shall not issue permits for development subsequent to the buildout ~~termination date or expiration~~ date contained in the development order unless:

1. The proposed development has been evaluated cumulatively with existing development under the substantial deviation provisions of subsection (19) subsequent to the termination or expiration date;

2. The proposed development is consistent with an abandonment of development order that has been issued in accordance with the provisions of subsection (26); ~~or~~

3. The development of regional impact is essentially built out, in that all the mitigation requirements in the development order have been satisfied, all developers are in compliance with all applicable terms and conditions of the development order

except the buildout date, and the amount of proposed development that remains to be built is less than 20 percent of any applicable development-of-regional-impact threshold; or

4.~~3.~~ The project has been determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government, in accordance with s. 380.032, which will establish the terms and conditions under which the development may be continued. If the project is determined to be essentially built out ~~built-out~~, development may proceed pursuant to the s. 380.032 agreement after the termination or expiration date contained in the development order without further development-of-regional-impact review subject to the local government comprehensive plan and land development regulations or subject to a modified development-of-regional-impact analysis. As used in this paragraph, an "essentially built-out" development of regional impact means:

a. The developers are ~~development is~~ in compliance with all applicable terms and conditions of the development order except the buildout ~~built-out~~ date; and

b.(I) The amount of development that remains to be built is less than the substantial deviation threshold specified in paragraph (19)(b) for each individual land use category, or, for a multiuse development, the sum total of all unbuilt land uses as a percentage of the applicable substantial deviation threshold is equal to or less than 100 percent; or

(II) The state land planning agency and the local government have agreed in writing that the amount of development

to be built does not create the likelihood of any additional regional impact not previously reviewed.

(h) The single-family residential portions of a development may be considered "essentially built out" if all of the infrastructure and horizontal development have been completed, at least 50 percent of the dwelling units have been completed, and more than 80 percent of the lots have been conveyed to third-party individual lot owners or to individual builders who own no more than 40 lots at the time of the determination.

(i) The mobile home park portions of a development may be considered "essentially built out" if all the infrastructure and horizontal development has been completed, and at least 50 percent of the lots are leased to individual mobile home owners.

(j) If the property is annexed by another local jurisdiction, the annexing jurisdiction shall adopt a new development order that incorporates all previous rights and obligations specified in the prior development order.

(19) SUBSTANTIAL DEVIATIONS.--

(a) Any proposed change to a previously approved development which creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, shall constitute a substantial deviation and shall cause the proposed change ~~development~~ to be subject to further development-of-regional-impact review. There are a variety of reasons why a developer may wish to propose changes to an approved development of regional impact, including changed

market conditions. The procedures set forth in this subsection are for that purpose.

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the following criteria shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review without the necessity for a finding of same by the local government:

1. An increase in the number of parking spaces at an attraction or recreational facility by 10 ~~5~~ percent or 330 ~~300~~ spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 10 ~~5~~ percent or 1,100 ~~1,000~~ spectators, whichever is greater.

2. A new runway, a new terminal facility, a 25-percent lengthening of an existing runway, or a 25-percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates.

~~3. An increase in the number of hospital beds by 5 percent or 60 beds, whichever is greater.~~

3.~~4.~~ An increase in industrial development area by 10 ~~5~~ percent or 35 ~~32~~ acres, whichever is greater.

4.~~5.~~ An increase in the average annual acreage mined by 10 ~~5~~ percent or 11 ~~10~~ acres, whichever is greater, or an increase in the average daily water consumption by a mining operation by 10 ~~5~~ percent or 330,000 ~~300,000~~ gallons, whichever is greater. An increase in the size of the mine by 10 ~~5~~ percent or 825 ~~750~~ acres, whichever is less. An increase in the size of a heavy

mineral mine as defined in s. 378.403(7) will only constitute a substantial deviation if the average annual acreage mined is more than 550 ~~500~~ acres and consumes more than 3.3 ~~3~~ million gallons of water per day.

5.~~6.~~ An increase in land area for office development by 10 ~~5~~ percent or an increase of gross floor area of office development by 10 ~~5~~ percent or 66,000 ~~60,000~~ gross square feet, whichever is greater.

~~7. An increase in the storage capacity for chemical or petroleum storage facilities by 5 percent, 20,000 barrels, or 7 million pounds, whichever is greater.~~

~~8. An increase of development at a waterport of wet storage for 20 watercraft, dry storage for 30 watercraft, or wet/dry storage for 60 watercraft in an area identified in the state marina siting plan as an appropriate site for additional waterport development or a 5 percent increase in watercraft storage capacity, whichever is greater.~~

6.~~9.~~ An increase in the number of dwelling units by 10 ~~5~~ percent or 55 ~~50~~ dwelling units, whichever is greater.

7. An increase in the number of dwelling units by 50 percent or 200 units, whichever is greater, provided that 15 percent of the increase in the number of dwelling units is dedicated to the construction of workforce housing. For purposes of this subparagraph, the term "workforce housing" means housing that is affordable to a person who earns less than 150 percent of the area median income.

8.~~10.~~ An increase in commercial development by 55,000 ~~50,000~~ square feet of gross floor area or of parking spaces

provided for customers for 330 ~~300~~ cars or a 10-percent ~~5-percent~~ increase of either of these, whichever is greater.

9.~~11.~~ An increase in hotel or motel rooms ~~facility units~~ by 10 ~~5~~ percent or 83 rooms ~~75 units~~, whichever is greater.

10.~~12.~~ An increase in a recreational vehicle park area by 10 ~~5~~ percent or 110 ~~100~~ vehicle spaces, whichever is less.

11.~~13.~~ A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

12.~~14.~~ A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 110 ~~100~~ percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 110 ~~100~~ percent has been reached or exceeded.

13.~~15.~~ A 15-percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

14.~~16.~~ Any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. s. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State.

The ~~further~~ refinement of the boundaries and configuration of such areas ~~by survey~~ shall be considered under sub-subparagraph (e)2.j. ~~(e)5.b.~~

The substantial deviation numerical standards in subparagraphs 3., 5., 8., 9., and 12. ~~4., 6., 10., 14.~~, excluding residential uses, and in subparagraph 13. ~~15.,~~ are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Office of Tourism, Trade, and Economic Development as to its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 3., 5., 6., 7., 8., 9., 12., and 13. ~~4., 6., 9., 10., 11., and 14.~~ are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.

(c) An extension of the date of buildout of a development, or any phase thereof, by more than 7 ~~or more~~ years shall be presumed to create a substantial deviation subject to further development-of-regional-impact review. An extension of the date of buildout, or any phase thereof, of more than 5 years ~~or more~~ but less than 7 years shall be presumed not to create a substantial deviation. The extension of the date of buildout of an areawide development of regional impact by more than 5 years but less than 10 years is presumed not to create a substantial deviation. These presumptions may be rebutted by clear and convincing evidence at the public hearing held by the local

government. An extension of 5 years or less ~~than 5 years~~ is not a substantial deviation. For the purpose of calculating when a buildout or~~,~~ phase~~, or termination~~ date has been exceeded, the time shall be tolled during the pendency of administrative or judicial proceedings relating to development permits. Any extension of the buildout date of a project or a phase thereof shall automatically extend the commencement date of the project, the termination date of the development order, the expiration date of the development of regional impact, and the phases thereof if applicable by a like period of time.

(d) A change in the plan of development of an approved development of regional impact resulting from requirements imposed by the Department of Environmental Protection or any water management district created by s. 373.069 or any of their successor agencies or by any appropriate federal regulatory agency shall be submitted to the local government pursuant to this subsection. The change shall be presumed not to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government.

(e)1. Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order that individually or cumulatively with any previous change is less than any numerical criterion contained in subparagraphs (b)1.-15. and does not exceed any other criterion, or that involves an extension of the buildout date of a development, or any phase thereof, of less than 5 years is not

subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5. Notice of the proposed change shall be made to the regional planning council and the state land planning agency. Such notice shall include a description of previous individual changes made to the development, including changes previously approved by the local government, and shall include appropriate amendments to the development order.

2. The following changes, individually or cumulatively with any previous changes, are not substantial deviations:

a. Changes in the name of the project, developer, owner, or monitoring official.

b. Changes to a setback that do not affect noise buffers, environmental protection or mitigation areas, or archaeological or historical resources.

c. Changes to minimum lot sizes.

d. Changes in the configuration of internal roads that do not affect external access points.

e. Changes to the building design or orientation that stay approximately within the approved area designated for such building and parking lot, and which do not affect historical buildings designated as significant by the Division of Historical Resources of the Department of State.

f. Changes to increase the acreage in the development, provided that no development is proposed on the acreage to be added.

g. Changes to eliminate an approved land use, provided that there are no additional regional impacts.

h. Changes required to conform to permits approved by any federal, state, or regional permitting agency, provided that these changes do not create additional regional impacts.

i. Any renovation or redevelopment of development within a previously approved development of regional impact which does not change land use or increase density or intensity of use.

j. Changes that modify boundaries and configuration of areas described in subparagraph (b)14. due to science-based refinement of such areas by survey, by habitat evaluation, by other recognized assessment methodology, or by an environmental assessment. In order for changes to qualify under this sub-subparagraph, the survey, habitat evaluation, or assessment must occur prior to the time a conservation easement protecting such lands is recorded and must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final development order.

k.~~j.~~ Any other change which the state land planning agency agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-j. ~~a.-i.~~ and which does not create the likelihood of any additional regional impact.

This subsection does not require the filing of a notice of proposed change but shall require an application to the local government to amend the development order in accordance with the local government's procedures for amendment of a development order. In accordance with the local government's procedures, including requirements for notice to the applicant and the

public, the local government shall either deny the application for amendment or adopt an amendment to the development order which approves the application with or without conditions. Following adoption, the local government shall render to the state land planning agency the amendment to the development order. The state land planning agency may appeal, pursuant to s. 380.07(3), the amendment to the development order if the amendment involves sub-subparagraph g., sub-subparagraph h., sub-subparagraph j., or sub-subparagraph k. and it believes the change creates a reasonable likelihood of new or additional regional impacts ~~a development order amendment for any change listed in sub-subparagraphs a.-j. unless such issue is addressed either in the existing development order or in the application for development approval, but, in the case of the application, only if, and in the manner in which, the application is incorporated in the development order~~.

3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.

4. Any submittal of a proposed change to a previously approved development shall include a description of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute

a substantial deviation requiring further development-of-regional-impact review.

5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence.

a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.

~~b. Except for the types of uses listed in subparagraph (b)16., any change which would result in the development of any area which was specifically set aside in the application for development approval or in the development order for preservation, buffers, or special protection, including habitat for plant and animal species, archaeological and historical sites, dunes, and other special areas.~~

b.~~c.~~ Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c), (d), (f), and (g) and residential use.

(f)1. The state land planning agency shall establish by rule standard forms for submittal of proposed changes to a previously approved development of regional impact which may require further development-of-regional-impact review. At a minimum, the standard form shall require the developer to

provide the precise language that the developer proposes to delete or add as an amendment to the development order.

2. The developer shall submit, simultaneously, to the local government, the regional planning agency, and the state land planning agency the request for approval of a proposed change.

3. No sooner than 30 days but no later than 45 days after submittal by the developer to the local government, the state land planning agency, and the appropriate regional planning agency, the local government shall give 15 days' notice and schedule a public hearing to consider the change that the developer asserts does not create a substantial deviation. This public hearing shall be held within 60 ~~90~~ days after submittal of the proposed changes, unless that time is extended by the developer.

4. The appropriate regional planning agency or the state land planning agency shall review the proposed change and, no later than 45 days after submittal by the developer of the proposed change, unless that time is extended by the developer, and prior to the public hearing at which the proposed change is to be considered, shall advise the local government in writing whether it objects to the proposed change, shall specify the reasons for its objection, if any, and shall provide a copy to the developer.

5. At the public hearing, the local government shall determine whether the proposed change requires further development-of-regional-impact review. The provisions of paragraphs (a) and (e), the thresholds set forth in paragraph

(b), and the presumptions set forth in paragraphs (c) and (d) and subparagraph (e)3. shall be applicable in determining whether further development-of-regional-impact review is required.

6. If the local government determines that the proposed change does not require further development-of-regional-impact review and is otherwise approved, or if the proposed change is not subject to a hearing and determination pursuant to subparagraphs 3. and 5. and is otherwise approved, the local government shall issue an amendment to the development order incorporating the approved change and conditions of approval relating to the change. The decision of the local government to approve, with or without conditions, or to deny the proposed change that the developer asserts does not require further review shall be subject to the appeal provisions of s. 380.07. However, the state land planning agency may not appeal the local government decision if it did not comply with subparagraph 4. The state land planning agency may not appeal a change to a development order made pursuant to subparagraph (e)1. or subparagraph (e)2. for developments of regional impact approved after January 1, 1980, unless the change would result in a significant impact to a regionally significant archaeological, historical, or natural resource not previously identified in the original development-of-regional-impact review.

(g) If a proposed change requires further development-of-regional-impact review pursuant to this section, the review shall be conducted subject to the following additional conditions:

1. The development-of-regional-impact review conducted by the appropriate regional planning agency shall address only those issues raised by the proposed change except as provided in subparagraph 2.

2. The regional planning agency shall consider, and the local government shall determine whether to approve, approve with conditions, or deny the proposed change as it relates to the entire development. If the local government determines that the proposed change, as it relates to the entire development, is unacceptable, the local government shall deny the change.

3. If the local government determines that the proposed change~~, as it relates to the entire development,~~ should be approved, any new conditions in the amendment to the development order issued by the local government shall address only those issues raised by the proposed change and require mitigation only for the individual and cumulative impacts of the proposed change.

4. Development within the previously approved development of regional impact may continue, as approved, during the development-of-regional-impact review in those portions of the development which are not directly affected by the proposed change.

(h) When further development-of-regional-impact review is required because a substantial deviation has been determined or admitted by the developer, the amendment to the development order issued by the local government shall be consistent with the requirements of subsection (15) and shall be subject to the hearing and appeal provisions of s. 380.07. The state land

planning agency or the appropriate regional planning agency need not participate at the local hearing in order to appeal a local government development order issued pursuant to this paragraph.

(i) An increase in the number of residential dwelling units shall not constitute a substantial deviation and shall not be subject to development-of-regional-impact review for additional impacts provided that all the residential dwelling units are dedicated to workforce housing. For purposes of this paragraph, the term "workforce housing" means housing that is affordable to a person who earns less than 150 percent of the area median income.

(24) STATUTORY EXEMPTIONS.--

(a) Any proposed hospital ~~which has a designed capacity of not more than 100 beds~~ is exempt from the provisions of this section.

(b) Any proposed electrical transmission line or electrical power plant is exempt from the provisions of this section~~, except any steam or solar electrical generating facility of less than 50 megawatts in capacity attached to a development of regional impact~~.

(c) Any proposed addition to an existing sports facility complex is exempt from the provisions of this section if the addition meets the following characteristics:

1. It would not operate concurrently with the scheduled hours of operation of the existing facility.

2. Its seating capacity would be no more than 75 percent of the capacity of the existing facility.

3. The sports facility complex property is owned by a public body prior to July 1, 1983.

This exemption does not apply to any pari-mutuel facility.

(d) Any proposed addition or cumulative additions subsequent to July 1, 1988, to an existing sports facility complex owned by a state university is exempt if the increased seating capacity of the complex is no more than 30 percent of the capacity of the existing facility.

(e) Any addition of permanent seats or parking spaces for an existing sports facility located on property owned by a public body prior to July 1, 1973, is exempt from the provisions of this section if future additions do not expand existing permanent seating or parking capacity more than 15 percent annually in excess of the prior year's capacity.

(f) Any increase in the seating capacity of an existing sports facility having a permanent seating capacity of at least 50,000 spectators is exempt from the provisions of this section, provided that such an increase does not increase permanent seating capacity by more than 5 percent per year and not to exceed a total of 10 percent in any 5-year period, and provided that the sports facility notifies the appropriate local government within which the facility is located of the increase at least 6 months prior to the initial use of the increased seating, in order to permit the appropriate local government to develop a traffic management plan for the traffic generated by the increase. Any traffic management plan shall be consistent

with the local comprehensive plan, the regional policy plan, and the state comprehensive plan.

(g) Any expansion in the permanent seating capacity or additional improved parking facilities of an existing sports facility is exempt from the provisions of this section, if the following conditions exist:

1.a. The sports facility had a permanent seating capacity on January 1, 1991, of at least 41,000 spectator seats;

b. The sum of such expansions in permanent seating capacity does not exceed a total of 10 percent in any 5-year period and does not exceed a cumulative total of 20 percent for any such expansions; or

c. The increase in additional improved parking facilities is a one-time addition and does not exceed 3,500 parking spaces serving the sports facility; and

2. The local government having jurisdiction of the sports facility includes in the development order or development permit approving such expansion under this paragraph a finding of fact that the proposed expansion is consistent with the transportation, water, sewer and stormwater drainage provisions of the approved local comprehensive plan and local land development regulations relating to those provisions.

Any owner or developer who intends to rely on this statutory exemption shall provide to the department a copy of the local government application for a development permit. Within 45 days of receipt of the application, the department shall render to the local government an advisory and nonbinding opinion, in

writing, stating whether, in the department's opinion, the prescribed conditions exist for an exemption under this paragraph. The local government shall render the development order approving each such expansion to the department. The owner, developer, or department may appeal the local government development order pursuant to s. 380.07, within 45 days after the order is rendered. The scope of review shall be limited to the determination of whether the conditions prescribed in this paragraph exist. If any sports facility expansion undergoes development of regional impact review, all previous expansions which were exempt under this paragraph shall be included in the development of regional impact review.

(h) Expansion to port harbors, spoil disposal sites, navigation channels, turning basins, harbor berths, and other related inwater harbor facilities of ports listed in s. 403.021(9)(b), port transportation facilities and projects listed in s. 311.07(3)(b), and intermodal transportation facilities identified pursuant to s. 311.09(3) are exempt from the provisions of this section when such expansions, projects, or facilities are consistent with comprehensive master plans that are in compliance with the provisions of s. 163.3178.

(i) Any proposed facility for the storage of any petroleum product or any expansion of an existing facility is exempt from the provisions of this section~~, if the facility is consistent with a local comprehensive plan that is in compliance with s. 163.3177 or is consistent with a comprehensive port master plan that is in compliance with s. 163.3178~~.

(j) Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use.

(k)~~1.~~ Waterport and marina development, including dry storage facilities, are exempt from the provisions of this section ~~Any waterport or marina development is exempt from the provisions of this section if the relevant county or municipality has adopted a boating facility siting plan or policy which includes applicable criteria, considering such factors as natural resources, manatee protection needs and recreation and economic demands as generally outlined in the Bureau of Protected Species Management Boat Facility Siting Guide, dated August 2000, into the coastal management or land use element of its comprehensive plan. The adoption of boating facility siting plans or policies into the comprehensive plan is exempt from the provisions of s. 163.3187(1). Any waterport or marina development within the municipalities or counties with boating facility siting plans or policies that meet the above criteria, adopted prior to April 1, 2002, are exempt from the provisions of this section, when their boating facility siting plan or policy is adopted as part of the relevant local government's comprehensive plan.~~

~~2. Within 6 months of the effective date of this law, The Department of Community Affairs, in conjunction with the Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission, shall provide technical assistance and guidelines, including model plans, policies and~~

~~criteria to local governments for the development of their siting plans~~.

(l) Any proposed development within an urban service boundary established under s. 163.3177(14) is exempt from the provisions of this section if the local government having jurisdiction over the area where the development is proposed has adopted the urban service boundary, ~~and~~ has entered into a binding agreement with ~~adjacent~~ jurisdictions that would be impacted and with the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate share methodology pursuant to s. 163.3180(16).

(m) Any proposed development within a rural land stewardship area created under s. 163.3177(11)(d) is exempt from the provisions of this section if the local government that has adopted the rural land stewardship area has entered into a binding agreement with jurisdictions that would be impacted and the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate share methodology pursuant to s. 163.3180(16).

(n) Any proposed development or redevelopment within an area designated as an urban infill and redevelopment area under s. 163.2517 is exempt from ~~the provisions of~~ this section if the local government has entered into a binding agreement with jurisdictions that would be impacted and the Department of Transportation regarding the mitigation of impacts on state and

regional transportation facilities, and has adopted a proportionate share methodology pursuant to s. 163.3180(16).

(o) The establishment, relocation, or expansion of any military installation as defined in s. 163.3175, is exempt from this section.

(p) Any self-storage warehousing that does not allow retail or other services is exempt from this section.

(q) Any proposed nursing home or assisted living facility is exempt from this section.

(r) Any development identified in an airport master plan and adopted into the comprehensive plan pursuant to s. 163.3177(6)(k) is exempt from this section.

(s) Any development identified in a campus master plan and adopted pursuant to s. 1013.30 is exempt from this section.

(t) Any development in a specific area plan which is prepared pursuant to s. 163.3245 and adopted into the comprehensive plan is exempt from this section.

If a use is exempt from review as a development of regional impact under paragraphs (a)-(t) but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project.

(28) PARTIAL STATUTORY EXEMPTIONS.--

(a) If the binding agreement referenced under paragraph (24)(l) for urban service boundaries is not entered into within 12 months after establishment of the urban service boundary, the

development-of-regional-impact review for projects within the urban service boundary must address transportation impacts only.

(b) If the binding agreement referenced under paragraph (24)(m) for rural land stewardship areas is not entered into within 12 months after the designation of a rural land stewardship area, the development-of-regional-impact review for projects within the rural land stewardship area must address transportation impacts only.

(c) If the binding agreement referenced under paragraph (24)(n) for designated urban infill and redevelopment areas is not entered into within 12 months after the designation of the area or July 1, 2007, whichever occurs later, the development-of-regional-impact review for projects within the urban infill and redevelopment area must address transportation impacts only.

(d) A local government that does not wish to enter into a binding agreement or that is unable to agree on the terms of the agreement referenced under paragraph (24)(l), paragraph (24)(m), or paragraph (24)(n) shall provide written notification to the state land planning agency of the decision to not enter into a binding agreement or the failure to enter into a binding agreement within the 12-month period referenced in paragraphs (a), (b) and (c). Following the notification of the state land planning agency, development-of-regional-impact review for projects within an urban service boundary under paragraph (24)(l), a rural land stewardship area under paragraph (24)(m), or an urban infill and redevelopment area under paragraph (24)(n), must address transportation impacts only.

Section 7. Paragraphs (d) and (e) of subsection (3) of section 380.0651, Florida Statutes, are amended, paragraphs (f) through (j) are redesignated as (e) through (i), respectively, and a new paragraph (j) is added to that subsection, to read:

380.0651 Statewide guidelines and standards.--

(3) The following statewide guidelines and standards shall be applied in the manner described in s. 380.06(2) to determine whether the following developments shall be required to undergo development-of-regional-impact review:

(d) Office development.--Any proposed office building or park operated under common ownership, development plan, or management that:

1. Encompasses 300,000 or more square feet of gross floor area; or

2. Encompasses more than 600,000 square feet of gross floor area in a county with a population greater than 500,000 and only in a geographic area specifically designated as highly suitable for increased threshold intensity in the approved local comprehensive plan ~~and in the strategic regional policy plan~~.

~~(e) Port facilities.--The proposed construction of any waterport or marina is required to undergo development-of-regional-impact review, except one designed for:~~

~~1.a. The wet storage or mooring of fewer than 150 watercraft used exclusively for sport, pleasure, or commercial fishing, or~~

~~b. The dry storage of fewer than 200 watercraft used exclusively for sport, pleasure, or commercial fishing, or~~

~~c. The wet or dry storage or mooring of fewer than 150 watercraft on or adjacent to an inland freshwater lake except Lake Okeechobee or any lake which has been designated an Outstanding Florida Water, or~~

~~d. The wet or dry storage or mooring of fewer than 50 watercraft of 40 feet in length or less of any type or purpose. The exceptions to this paragraph's requirements for development of regional impact review shall not apply to any waterport or marina facility located within or which serves physical development located within a coastal barrier resource unit on an unbridged barrier island designated pursuant to 16 U.S.C. s. 3501.~~

~~In addition to the foregoing, for projects for which no environmental resource permit or sovereign submerged land lease is required, the Department of Environmental Protection must determine in writing that a proposed marina in excess of 10 slips or storage spaces or a combination of the two is located so that it will not adversely impact Outstanding Florida Waters or Class II waters and will not contribute boat traffic in a manner that will have an adverse impact on an area known to be, or likely to be, frequented by manatees. If the Department of Environmental Protection fails to issue its determination within 45 days of receipt of a formal written request, it has waived its authority to make such determination. The Department of Environmental Protection determination shall constitute final agency action pursuant to chapter 120.~~

~~2. The dry storage of fewer than 300 watercraft used exclusively for sport, pleasure, or commercial fishing at a marina constructed and in operation prior to July 1, 1985.~~

~~3. Any proposed marina development with both wet and dry mooring or storage used exclusively for sport, pleasure, or commercial fishing, where the sum of percentages of the applicable wet and dry mooring or storage thresholds equals 100 percent. This threshold is in addition to, and does not preclude, a development from being required to undergo development of regional impact review under sub-subparagraphs 1.a. and b. and subparagraph 2.~~

(j) Workforce housing.--The applicable guidelines for residential development and the residential component for multiuse development shall be increased by 50 percent where the developer demonstrates that at least 15 percent of the residential dwelling units will be dedicated to workforce housing. For purposes of this paragraph, the term "workforce housing" means housing that is affordable to a person who earns less than 150 percent of the area median income.

Section 8. Section 380.07, Florida Statutes, is amended to read:

380.07 Florida Land and Water Adjudicatory Commission.--

(1) There is hereby created the Florida Land and Water Adjudicatory Commission, which shall consist of the Administration Commission. The commission may adopt rules necessary to ensure compliance with the area of critical state concern program and the requirements for developments of regional impact as set forth in this chapter.

(2) Whenever any local government issues any development order in any area of critical state concern, or in regard to any development of regional impact, copies of such orders as prescribed by rule by the state land planning agency shall be transmitted to the state land planning agency, the regional planning agency, and the owner or developer of the property affected by such order. The state land planning agency shall adopt rules describing development order rendition and effectiveness in designated areas of critical state concern. Within 45 days after the order is rendered, the owner, the developer, or the state land planning agency may appeal the order to the Florida Land and Water Adjudicatory Commission by filing a petition alleging that the development order is not consistent with the provisions of this part ~~notice of appeal with the commission~~. The appropriate regional planning agency by vote at a regularly scheduled meeting may recommend that the state land planning agency undertake an appeal of a development-of-regional-impact development order. Upon the request of an appropriate regional planning council, affected local government, or any citizen, the state land planning agency shall consider whether to appeal the order and shall respond to the request within the 45-day appeal period. ~~Any appeal taken by a regional planning agency between March 1, 1993, and the effective date of this section may only be continued if the state land planning agency has also filed an appeal. Any appeal initiated by a regional planning agency on or before March 1, 1993, shall continue until completion of the appeal process and~~

~~any subsequent appellate review, as if the regional planning agency were authorized to initiate the appeal.~~

(3) Notwithstanding any other provision of law, an appeal of a development order by the state land planning agency under this section may include consistency of the development order with the local comprehensive plan. However, if a development order relating to a development of regional impact has been challenged in a proceeding under s. 163.3215 and a party to the proceeding serves notice to the state land planning agency of the pending proceeding under s. 163.3215, the state land planning agency shall:

(a) Raise its consistency issues by intervening as a full party in the pending proceeding under s. 163.3215 within 30 days after service of the notice; and

(b) Dismiss the consistency issues from the development order appeal.

(4) The appellant shall furnish a copy of the petition to the opposing party, as the case may be, and to the local government that issued the order. The filing of the petition stays the effectiveness of the order until after the completion of the appeal process.

(5) ~~(3)~~ The 45-day appeal period for a development of regional impact within the jurisdiction of more than one local government shall not commence until after all the local governments having jurisdiction over the proposed development of regional impact have rendered their development orders. The appellant shall furnish a copy of the notice of appeal to the opposing party, as the case may be, and to the local government

which issued the order. The filing of the notice of appeal shall stay the effectiveness of the order until after the completion of the appeal process.

(6) ~~(4)~~ Prior to issuing an order, the Florida Land and Water Adjudicatory Commission shall hold a hearing pursuant to the provisions of chapter 120. The commission shall encourage the submission of appeals on the record made below in cases in which the development order was issued after a full and complete hearing before the local government or an agency thereof.

(7) ~~(5)~~ The Florida Land and Water Adjudicatory Commission shall issue a decision granting or denying permission to develop pursuant to the standards of this chapter and may attach conditions and restrictions to its decisions.

~~(6) If an appeal is filed with respect to any issues within the scope of a permitting program authorized by chapter 161, chapter 373, or chapter 403 and for which a permit or conceptual review approval has been obtained prior to the issuance of a development order, any such issue shall be specifically identified in the notice of appeal which is filed pursuant to this section, together with other issues which constitute grounds for the appeal. The appeal may proceed with respect to issues within the scope of permitting programs for which a permit or conceptual review approval has been obtained prior to the issuance of a development order only after the commission determines by majority vote at a regularly scheduled commission meeting that statewide or regional interests may be adversely affected by the development. In making this determination, there shall be a rebuttable presumption that~~

~~statewide and regional interests relating to issues within the scope of the permitting programs for which a permit or conceptual approval has been obtained are not adversely affected.~~

Section 9. Section 380.115, Florida Statutes, is amended to read:

380.115 Vested rights and duties; effect of size reduction, changes in guidelines and standards ~~chs. 2002-20 and 2002-296~~.--

(1) A change in a development-of-regional-impact guideline and standard does not abridge ~~Nothing contained in this act abridges~~ or modify ~~modifies~~ any vested or other right or any duty or obligation pursuant to any development order or agreement that is applicable to a development of regional impact ~~on the effective date of this act~~. A development that has received a development-of-regional-impact development order pursuant to s. 380.06, but is no longer required to undergo development-of-regional-impact review by operation of a change in the guidelines and standards or has reduced its size below the thresholds in s. 380.0651 ~~of this act~~, shall be governed by the following procedures:

(a) The development shall continue to be governed by the development-of-regional-impact development order and may be completed in reliance upon and pursuant to the development order unless the developer or landowner has followed the procedures for rescission in paragraph (b). Any proposed changes to those developments which continue to be governed by a development order shall be approved pursuant to s. 380.06(19) as it existed

prior to a change in the development-of-regional-impact guidelines and standards except that all percentage criteria shall be doubled and all other criteria shall be increased by 10 percent. The development-of-regional-impact development order may be enforced by the local government as provided by ss. 380.06(17) and 380.11.

(b) If requested by the developer or landowner, the development-of-regional-impact development order shall ~~may~~ be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed ~~abandoned pursuant to the process in s. 380.06(26)~~.

(2) A development with an application for development approval pending, ~~and determined sufficient~~ pursuant to s. 380.06 ~~s. 380.06(10)~~, on the effective date of a change to the guidelines and standards ~~this act~~, or a notification of proposed change pending on the effective date of a change to the guidelines and standards ~~this act~~, may elect to continue such review pursuant to s. 380.06. At the conclusion of the pending review, including any appeals pursuant to s. 380.07, the resulting development order shall be governed by the provisions of subsection (1).

(3) A landowner that has filed an application for a development-of-regional-impact review prior to the adoption of an optional sector plan pursuant to s. 163.3245 may elect to have the application reviewed pursuant to s. 380.06, comprehensive plan provisions in force prior to adoption of the

sector plan, and any requested comprehensive plan amendments that accompany the application.

Section 10. Paragraph (i) of subsection (2) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.--

(2) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, nothing in this subsection relieves an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or any water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(i) The construction of private docks of 1,000 square feet or less of over-water surface area and seawalls in artificially created waterways where such construction will not violate existing water quality standards, impede navigation, or affect flood control. This exemption does not apply to the construction of vertical seawalls in estuaries or lagoons unless the proposed construction is within an existing manmade canal where the shoreline is currently occupied in whole or part by vertical seawalls.

Section 11. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1049 CS Driver's Licenses
SPONSOR(S): Traviesa and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	13 Y, 2 N, w/CS	Thompson	Miller
2) Judiciary Committee	10 Y, 0 N, w/CS	Hogge	Hogge
3) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

The bill authorizes courts to order the Department of Highway Safety and Motor Vehicles (DHSMV or department) to withhold the issuance of, or suspend or revoke the driver's license or driving privilege of any person who violates the sale to persons under 21 years of age prohibition in s. 562.11(1), F.S. The bill exempts alcoholic beverage licensees and employees or agents of a licensee who violate s. 562.11(1), F.S., while engaged within the scope of his or her license, employment, or agency.

The bill provides, notwithstanding the driver's license suspension and revocation provisions in s. 322.28, F.S., the court may order the department to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege of any person who violates the sale to underage persons prohibition in s. 562.11(1), F.S. The bill provides the court may order the department to issue a driver's license restricted to business or employment purposes.

The bill provides a time frame for the delay of issuance of a license or the suspension or revocation of a license of not less than three months or more than six months for a first violation and one year for any subsequent violation.

The bill would take effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government— HB 1049 CS provides for an additional sanction for any person who sells, gives, serves or permits to be served alcoholic beverages to a person under age 21 or permits a person under 21 to consume alcoholic beverages on the licensed premised. The bill exempts licensees under the Beverage Law, Chapter 561, F.S., and their employees or agents from this additional sanction.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 562.11(1)(a), F.S., provides that it is unlawful to sell, give, serve or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume alcoholic beverages on the licensed premises. Anyone convicted of a violation of these provisions is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed $500.

Pursuant to s. 561.01, F.S., a "licensee" under the Beverage Law (defined in chs. 562, 563, 564, 565, 567, and 568, F.S.), means a "legal or business entity, person, or persons that hold a license issued by the [Division of Alcoholic Beverages and Tobacco] and meet the qualifications set forth in s. 561.15, F.S."

Chapter 322, F.S., relates to the administration of driver's licenses by the department. Section 322.01(16), F.S., defines the term "driver's license" to mean "a certificate which, subject to all other requirements of law, authorizes an individual to drive a motor vehicle."

Persons under the age of 21 may be employed by alcoholic beverage licensees. Section 562.13, F.S, prohibits alcoholic beverage vendors to employ any person less than 18 years of age, but this prohibition does not apply to:

- Professional entertainers 17 years of age who are not in school;
- Minors employed in the entertainment industry and who are employed under the procedures established for such employment or who have been granted a waiver from the Child Labor Law;
- Persons under the age of 18 years employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations which have licenses to sell beer and wine for consumption off the premises;
- Any senior high school student with written permission of their principal or any high school graduate employed by a bona fide food service establishment where alcoholic beverages are sold if they do not participate in the sale, preparation, or service of alcoholic beverages and their duties provide training that may lead to advancement in the food service establishments;
- Persons under the age of 18 years employed as bellhops, elevator operators, and other duties in hotels that do not work in the portion of the hotel where alcoholic beverages are sold for consumption on the premises;
- Persons under the age of 18 years employed in bowling alleys if they do not participate in the sale, preparation, or service of alcoholic beverages;
- Persons under the age of 18 years employed by a bona fide dinner theater whose employment is limited to being an actor, actress, or musician;

- Persons under the age of 18 years who are employed by a theme park as provided in s. 562.02(6), F.S., if they do not participate in the sale, preparation, or service of alcoholic beverages; or
- A minor subject to this section, may not be employed if the employment involves nudity on the part of the minor and the nudity is intended as adult entertainment.

Driver's License Suspension or Revocations

Section 322.28, F.S., sets forth the provisions related to suspension or revocation of driver's licenses. Section 322.28(1), F.S, provides the department shall not suspend a license for a period of more than one year. The section also provides an exception to this limit for violations related to driving under the influence of alcoholic beverages, chemical substances as set forth in s. 877.111, F.S., or controlled substances. For these violations, the department is prohibited from granting a new license until the expiration of one year after such revocation.

Section 322.271, F.S., provides the court may direct the department to issue a driver's license restricted to business or employment purposes only to a person who is otherwise qualified for a license.

Proposed Changes

The bill amends s. 562.11, F.S., to authorize courts to order the DHSMV to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege of any person who violates the sale to minors prohibition in s. 562.11(1), F.S. The bill exempts alcoholic beverage licensees, and employees or agents of a licensee who violate s. 562.11(1), F.S., while engaged within the scope of their license, employment, or agency thus making the penalty applicable only to third-parties who sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age.

The bill creates s. 322.057, F.S., to provide, notwithstanding s. 322.28, F.S., courts may order the DHSMV to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege of any person who violates the sale to underage persons prohibition in s. 562.11(1), F.S. Alcoholic beverage licensees and employees or agents of a licensee who violate the prohibition in s. 562.11(1), F.S., while engaged within the scope of their license, employment, or agency are exempted.

This section provides a time frame for the delay in issuance of a license or the suspension or revocation of a license of not less than 3 months or more than 6 months for a first violation and one year for any subsequent violation.

C. SECTION DIRECTORY:

Section 1. Amends s. 562.11, F.S., providing for an additional sanction for any person who sells, gives, serves or permits to be served alcoholic beverages to a person under age 21 or permits a person under 21 to consume alcoholic beverages on the licensed premised. The bill exempts licensees under the Beverage Law, Chapter 561, F.S., and their employees or agents from this additional sanction.

Section 2. Creates s. 322.057, F.S., to provide that the period in which the driver's license would be withheld, suspended or revoked would be between 3 and 6 months for the first violation and one year for any subsequent violation. The bill would permit the court to order the DHSMV to issue a driver's license restricted to business or employment purposes, if the person otherwise qualifies for a driver's license

Section 3. Provides that the bill takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the DHSMV, this bill may generate additional revenue as a result of reinstating the driving privileges of persons suspended or revoked pursuant to this bill. However, the number of individuals to be suspended and the amount of revenue to be collected is indeterminate. Additionally, the DHSMV will incur an indeterminate amount of administrative expense in managing the withholding, suspension, and revocation of driver's licenses. DHSMV also believes this bill will require programming modifications to driver license software systems that will be absorbed as part of the normal workload.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Judiciary Committee amended the Transportation Committee CS to clarify that the licensee to which the CS refers is a licensee under the beverage law and not a person having a driver's license. The bill was then reported out favorably as a committee substitute.

On March 14, 2006, the Transportation Committee amended HB 1049 to make minor grammatical corrections. The committee then voted 13-2 to report the bill favorably with committee substitute.

CHAMBER ACTION

The Judiciary Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to driver's licenses; amending s. 562.11, F.S.; providing an additional penalty for providing alcoholic beverages to a person who has not attained 21 years of age; creating s. 322.057, F.S.; requiring a court to order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver's license of certain persons who provide alcoholic beverages to a person who has not attained 21 years of age; providing for exceptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 562.11, Florida Statutes, is amended to read:

562.11 Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or

misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.--

(1)(a)1. It is unlawful for any person to sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume such beverages on the licensed premises. A person who violates this subparagraph commits ~~Anyone convicted of violation of the provisions hereof is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. In addition to any other penalty imposed for a violation of subparagraph 1., the court shall order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege, as provided in s. 322.057, of any person who violates subparagraph 1., other than a licensee under this chapter or an employee or agent of a licensee under this chapter.

Section 2. Section 322.057, Florida Statutes, is created to read:

322.057 Mandatory revocation or suspension of driver's license for certain persons who provide alcohol to persons under 21 years of age.--

(1) Notwithstanding s. 322.28, the court shall order the department to withhold the issuance of, or suspend or revoke, the driver's license of a person 21 years of age or older, other than a licensee under chapter 561 or an employee or agent of a licensee under chapter 561, who is found guilty of a violation

of s. 562.11(1)(a), for not less than 3 months or more than 6 months for a violation and 1 year for any subsequent violation.

(2) The court may direct the department to issue a driver's license restricted to business or employment purposes only, as provided in s. 322.271, to a person who is otherwise qualified for a license.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1465 CS Speed Limit Enforcement on State Roads
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 2 N, w/CS	Thompson	Miller
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1465 requires the Florida Department of Transportation (FDOT) to establish "enhanced penalty zones" on state highways where there is an increased risk of crashes or damage caused by crashes. FDOT would be authorized to establish speed limits within the zones. Current fines would be increased by $50 for any person convicted of exceeding the speed limit in an enhanced penalty zone. Additionally, speeding in a posted construction zone will result in a doubling of normal fines regardless of whether construction workers are present. FDOT and the Department of Highway Safety and Motor Vehicles (DHSMV) are directed to jointly study and identify by July 1, 2007, improvements to reduce Florida's traffic fatalities by one-third.

The fiscal impact incurred by the DHSMV would be indeterminate and the fiscal impact to the FDOT relating to establishing enhanced penalty zones is unknown due to the indeterminate number of zones to be designated. FDOT indicated the cost of conducting the highway safety and transportation issue study would be approximately $500,000. To the extent that the bill results in additional citations being issued, additional traffic penalties would be collected. These additional funds would primarily benefit trauma centers and local governments.

Provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility—To the extent that enhanced penalty zones will allow for more effective enforcement of the speed limit, the bill tends to increase personal accountability of drivers for failure to comply with the law.

B. EFFECT OF PROPOSED CHANGES:

Background

According the National Highway Traffic Safety Administration (NHTSA), a crash is considered speed-related if the driver was charged with a speed-related offense or if an officer indicated racing, driving too fast for conditions, or exceeding the posted speed limit was a contributing factor in the crash. Based on DHSMV statistics, excessive speed was a contributing factor in 13.44 percent of all fatal crashes in 2004 making it the fourth overall contributing cause after careless driving, failure to yield right-of-way, and alcohol.

Section 316.183, F.S., requires all persons driving a vehicle on a highway to travel at no greater speed than is "reasonable and prudent" under the present conditions and as necessary to avoid actual and potential hazards, and to control the vehicle's speed "as may be necessary to avoid colliding with any person, vehicle, or other conveyance or object." The maximum speed limit on all streets or highways is 30 m.p.h. in business or residence districts and 55 m.p.h. at all other locations. However, counties and municipalities may set a maximum speed limit of 20 or 25 m.p.h. on local roads if an investigation determines this is reasonable. The minimum speed limit on all Interstate highways is 40 m.p.h., except when the posted maximum speed limit is 70 m.p.h., the minimum speed limit is 50 m.p.h.

Section 316.187, F.S., provides FDOT the authority to establish reasonable and safe speed limits on any highway outside of a municipality or upon any state road within or outside of a municipality. The maximum allowable speed for limited access highways is 70 m.p.h. The maximum allowable speed limit on any other rural, four or more lane highway divided by a median strip is 65 miles per hour. The FDOT may set maximum and minimum speed limits for other roads under its authority as it deems safe and advisable, up to a maximum of 60 m.p.h.

Section 316.0745, F.S., directs FDOT to adopt a uniform system of traffic control devices, including regulatory speed signs, for use on the streets and highways of the state.

Section 318.18, F.S., relating to penalties for speeding, provides for moving violations involving unlawful speed, the fines are as follows:

For speed exceeding the limit by:	Fine:
1-5 m.p.h.	Warning
6-9 m.p.h.	$ 25
10-14 m.p.h.	$100
15-19 m.p.h.	$125
20-29 m.p.h.	$150
30 m.p.h. and above	$250

In posted construction zones, the fine for excessive speed is doubled if the violation occurs when construction workers are present or immediately adjacent to the roadway under construction. Revenue collected from fines is distributed between the state and local governments.

Speeding violations typically result in assessment of three points against the violator's driver's license, unless the infraction or offense is among those considered as more serious. For example, speeding in excess of 15 mph over the posted limit requires an assessment of four points, and speeding resulting in a crash requires an assessment of 6 points. Section 322.27, F.S., sets out the points system for traffic violations.

HB 1465 creates s. 316.1893, F.S., establishing the Legislature's intent to maximize public safety and prevent vehicular fatalities by prioritizing the enforcement of speeding laws on the segments of the state's highways that have the most dangerous incidence of fatalities. The bill requires FDOT to establish enhanced penalty zones on state highways where there is a high incidence of fatal crashes by July 1, 2008, and grants FDOT authority to set maximum and minimum speed limits within the enhanced penalty zones. The bill also directs the FDOT to adopt a uniform system of traffic control devices for use in conjunction with enhanced penalty zones.

The bill also directs the DHSMV to annually publish the date, time, and number of citations issued both in and outside enhanced penalty zones and to make available statistical information based on the traffic citations issued inside the enhanced penalty zones.

HB 1465 w/CS directs FDOT and DHSMV to jointly conduct a study of highway safety and transportation issues to identify measures to reduce highway traffic fatalities by one-third of the 2005 traffic fatality statistic. Results of the study must be presented to Governor, President of the Senate, and the Speaker of the House of Representatives by July 1, 2007.

The bill amends s. 318.18, F.S., to remove the existing conditional requirement for workers to be present in a construction zone for violations that would result in a doubling of fines for speeding in a posted construction zone. The bill increases fines for persons cited for exceeding the speed limit in an enhanced penalty zone by $50. The fines will be assessed as follows:

For speed exceeding the limit by:	Fine:	Enhanced Penalty Zone Fine:	Posted Construction Zone Fine:
1-5 m.p.h.	Warning	$50	Warning
6-9 m.p.h.	$ 25	$75	$50
10-14 m.p.h.	$100	$150	$200
15-19 m.p.h.	$125	$175	$250
20-29 m.p.h.	$150	$200	$300
30 m.p.h. and above	$250	$300	$500

The bill also amends s. 318.18, F.S., to provide for the allocation of 50 percent of the moneys received from the $50 fine imposed by the bill to be remitted to the Department of Revenue and deposited into the Department of Health Administrative Trust Fund to provide financial support to certified trauma centers. These funds are to be allocated as follows:

- 50 percent are to be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services,
- 50 percent are to be allocated among all Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as reported in the Department of Health Trauma Registry, and
- The remainder is to be remitted for disposition by county courts in the same manner as other traffic penalty revenue.

The bill amends s. 318.14, F.S., to correct cross references relating to the distribution and monthly payment of civil penalties by county courts. The bill reenacts certain provisions of ss. 318.14, 318.15, 318.21, 402.40, and 985.406, F.S. for the purpose of incorporating the amendment made by this bill to s. 318.18, F.S.

C. SECTION DIRECTORY:

Section 1. Creates s. 316.1893, F.S., to provide legislative intent to prevent vehicular fatalities by prioritizing enforcement on segments of highways that have a high incidence of fatalities; to provide for establishment by DOT of enhanced penalty zones on state roads by July 1, 2008; to authorize DOT to set maximum and minimum speed limits within those zones; to direct DOT to adopt a uniform system of traffic control devices to be used within the zones; to provide penalties for the operation of a vehicle at a speed greater than that posted in the enhanced penalty zone; and to direct DHSMV to tabulate citations and calculate statistical information within these zones.

Section 2. Directs the DHSMV, DOT and DOE to conduct a study of highway safety and transportation issues and report to the Governor and the Legislature no later than July 1, 2007.

Section 3. Amends s. 318.18, F.S., to remove the condition that construction zone workers must be present for an increased penalty for violation of posted speed in a construction zone, providing penalties for a violation of posted speed in an enhanced penalty zone and providing for the allocation of the moneys received from the enhanced fine.

Section 4. Amends s. 318.21, F.S., to correct cross-references to conform changes made by the act.

Section 5. Reenacting s 318.14(2), (5), and (9), F.S., for the purpose of incorporating the amendment made by this bill to section 318.18, F.S.

Section 6. Reenacting s 318.15(1) (a) and (2), F.S., for the purpose of incorporating the amendment made by this bill to section 318.18, F.S.

Section 7. Reenacting s 318.21(7), F.S., for the purpose of incorporating the amendment made by this bill to section 318.18, F.S.

Section 8. Reenacting s 402.40(4) (b), F.S., for the purpose of incorporating the amendment made by this bill to section 318.18, F.S., and

Section 9. Reenacting s 985.406(4) (b), F.S., for the purpose of incorporating the amendment made by this bill to section 318.18, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS section, below.

2. Expenditures:

   See FISCAL COMMENTS section, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS section, below.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS section, below.

D. FISCAL COMMENTS:

Establishing "enhanced penalty zones" may result in the issuance of an increased number of citations, and the assessment of additional traffic penalties and court costs. However, because it is impossible to forecast how many additional violations will occur and be cited, the fiscal impact on state and local governments is unknown. Also, signage and enforcement efforts could have a deterrent effect on drivers who speed, thereby reducing the number of speeding citations issued.

To the extent that the bill results in additional citations being issued, additional traffic penalties would be collected. These additional funds would primarily benefit trauma centers and local governments.

To the extent that the bill could prevent vehicular fatalities by prioritizing enforcement on segments of highways that have a high incidence of fatalities, crash-related injuries and deaths could be reduced thereby decreasing associated medical and insurance costs.

The fiscal impact to the FDOT relating to establishing enhanced penalty zones is unknown due to the indeterminate number of zones to be designated. Each zone would require an engineering analysis for length, signage, and sign installation. FDOT indicated the cost of conducting the highway safety and transportation issue study would be approximately $500,000.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

HB 1465 does not require any grant or exercise of rule-making authority to implement its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On **March 28, 2006** the Transportation Committee amended HB 1465 to provide for the allocation of 50 percent of the moneys received from the enhanced fine imposed by the bill to be remitted to the Department of Revenue and deposited into the Department of Health Administrative Trust Fund to provide financial support to certified trauma centers.

The committee then voted 15-2 to report the bill favorably with committee substitute.

CHAMBER ACTION

The Transportation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to speed limit enforcement on state roads; creating s. 316.1893, F.S.; providing legislative intent; providing for establishment by the Department of Transportation of enhanced penalty zones on state roads; authorizing the department to set speed limits within those zones; directing the department to adopt a uniform system of traffic control devices to be used within the zones; prohibiting operation of a vehicle at a speed greater than that posted in the enhanced penalty zone; directing the Department of Highway Safety and Motor Vehicles to tabulate citations issued within enhanced penalty zones and make available certain information; directing the Department of Transportation, the Department of Highway Safety and Motor Vehicles, and the Department of Education to conduct a study and report to the Governor and the Legislature for certain purposes; amending s. 318.18, F.S.; removing a condition for an increased penalty for violation of posted speed in a construction

zone; providing penalties for violation of posted speed in an enhanced penalty zone; providing for distribution of moneys collected; amending s. 318.21, F.S.; correcting cross-references to conform to changes made by the act; reenacting ss. 318.14(2), (5), and (9), 318.15(1)(a) and (2), 318.21(7), 402.40(4)(b), and 985.406(4)(b), F.S., relating to noncriminal traffic infraction procedures, failure to comply with civil penalty or to appear, disposition of civil penalties by county courts, child welfare training, and juvenile justice training academies, respectively, for the purpose of incorporating the amendment made to s. 318.18, F.S., in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 316.1893, Florida Statutes, is created to read:

316.1893 Establishment of enhanced penalty zones; designation.--

(1) It is the intent of the Legislature to prevent vehicular fatalities by prioritizing enforcement on segments of highways that have a high incidence of fatalities. Enforcement shall also be prioritized during the times that fatalities most often occur. The enforcement of these zones shall be in a way that maximizes public safety.

(2) No later than July 1, 2008, the Department of Transportation shall identify enhanced penalty zones on state roads where there is a high incidence of fatalities.

(3) The Department of Transportation, pursuant to the authority granted under s. 316.187, is authorized to set such maximum and minimum speed limits for travel within enhanced penalty zones as it deems safe and advisable.

(4) The Department of Transportation shall adopt a uniform system of traffic control devices for use in conjunction with enhanced penalty zones pursuant to the authority granted under s. 316.0745.

(5) A person may not drive a vehicle on a roadway designated as an enhanced penalty zone at a speed greater than that posted in the enhanced penalty zone in accordance with this section. A person who violates the speed limit within a legally posted enhanced penalty zone established under this section commits a moving violation, punishable as provided in chapter 318.

(6) The Department of Highway Safety and Motor Vehicles shall annually publish the date, time, and number of citations issued both in and outside enhanced penalty zones and shall make available statistical information based thereon as to the number and circumstances of traffic citations inside an enhanced penalty zone.

Section 2. The Department of Transportation, the Department of Highway Safety and Motor Vehicles, and the Department of Education shall jointly conduct a study of highway safety and transportation issues as they relate to public

safety, including, but not limited to, engineering, enforcement, and policy, to identify measurable improvements to reduce highway traffic fatalities by one-third of the 2005 traffic death statistics. The results of the study shall be presented to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than July 1, 2007, for a public hearing and development of legislative recommendations.

Section 3. Paragraph (d) of subsection (3) of section 318.18, Florida Statutes, is amended, paragraphs (e) and (f) of that subsection are redesignated as paragraphs (f) and (g), respectively, and a new paragraph (e) is added to that subsection, to read:

318.18 Amount of civil penalties.--The penalties required for a noncriminal disposition pursuant to s. 318.14 are as follows:

(3)

(d) A person cited for exceeding the speed limit in a posted construction zone shall pay a fine double the amount listed in paragraph (b). ~~The fine shall be doubled for construction zone violations only if construction personnel are present or operating equipment on the road or immediately adjacent to the road under construction.~~

(e) A person cited for exceeding the speed limit in an enhanced penalty zone shall pay a fine amount of $50 plus the amount listed in paragraph (b). Notwithstanding paragraph (b), a person cited for exceeding the speed limit by up to 5 m.p.h. in a legally posted enhanced penalty zone shall pay a fine amount of $50.

1. Fifty percent of the moneys received from the enhanced fine imposed by this paragraph shall be remitted to the Department of Revenue and deposited into the Department of Health Administrative Trust Fund to provide financial support to certified trauma centers to ensure the availability and accessibility of trauma services throughout the state. Funds deposited into the Administrative Trust Fund under this paragraph shall be allocated as follows:

a. Fifty percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

b. Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as reported in the Department of Health Trauma Registry.

2. The remainder of the enhanced fine moneys imposed by this paragraph shall be remitted for disposition under s. 318.21.

Section 4. Subsections (4) and (5) of section 318.21, Florida Statutes, are amended to read:

318.21 Disposition of civil penalties by county courts.--All civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly as follows:

(4) Of the additional fine assessed under s. 318.18(3)(f)~~(e)~~ for a violation of s. 316.1301, 40 percent must be remitted to the Department of Revenue for deposit in the Grants and Donations Trust Fund of the Division of Blind

Services of the Department of Education, and 60 percent must be distributed pursuant to subsections (1) and (2).

(5) Of the additional fine assessed under s. 318.18(3)(f) ~~(e)~~ for a violation of s. 316.1303, 60 percent must be remitted to the Department of Revenue for deposit in the endowment fund for the Florida Endowment Foundation for Vocational Rehabilitation, and 40 percent must be distributed pursuant to subsections (1) and (2) of this section.

Section 5. For the purpose of incorporating the amendment made by this act to section 318.18, Florida Statutes, in references thereto, subsections (2), (5), and (9) of section 318.14, Florida Statutes, are reenacted to read:

318.14 Noncriminal traffic infractions; exception; procedures.--

(2) Except as provided in s. 316.1001(2), any person cited for an infraction under this section must sign and accept a citation indicating a promise to appear. The officer may indicate on the traffic citation the time and location of the scheduled hearing and must indicate the applicable civil penalty established in s. 318.18.

(5) Any person electing to appear before the designated official or who is required so to appear shall be deemed to have waived his or her right to the civil penalty provisions of s. 318.18. The official, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the official may impose a civil penalty not to exceed $500, except that in cases involving unlawful speed in a school zone or involving

unlawful speed in a construction zone, the civil penalty may not exceed $1,000; or require attendance at a driver improvement school, or both. If the person is required to appear before the designated official pursuant to s. 318.19(1) and is found to have committed the infraction, the designated official shall impose a civil penalty of $1,000 in addition to any other penalties and the person's driver's license shall be suspended for 6 months. If the person is required to appear before the designated official pursuant to s. 318.19(2) and is found to have committed the infraction, the designated official shall impose a civil penalty of $500 in addition to any other penalties and the person's driver's license shall be suspended for 3 months. If the official determines that no infraction has been committed, no costs or penalties shall be imposed and any costs or penalties that have been paid shall be returned. Moneys received from the mandatory civil penalties imposed pursuant to this subsection upon persons required to appear before a designated official pursuant to s. 318.19(1) or (2) shall be remitted to the Department of Revenue and deposited into the Department of Health Administrative Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout the state. Funds deposited into the Administrative Trust Fund under this section shall be allocated as follows:

(a) Fifty percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

(b) Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as reported in the Department of Health Trauma Registry.

(9) Any person who does not hold a commercial driver's license and who is cited for an infraction under this section other than a violation of s. 320.0605, s. 320.07(3)(a) or (b), s. 322.065, s. 322.15(1), s. 322.61, or s. 322.62 may, in lieu of a court appearance, elect to attend in the location of his or her choice within this state a basic driver improvement course approved by the Department of Highway Safety and Motor Vehicles. In such a case, adjudication must be withheld; points, as provided by s. 322.27, may not be assessed; and the civil penalty that is imposed by s. 318.18(3) must be reduced by 18 percent; however, a person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may make no more than five elections under this subsection. The requirement for community service under s. 318.18(8) is not waived by a plea of nolo contendere or by the withholding of adjudication of guilt by a court.

Section 6. For the purpose of incorporating the amendment made by this act to section 318.18, Florida Statutes, in references thereto, paragraph (a) of subsection (1) and subsection (2) of section 318.15, Florida Statutes, are reenacted to read:

318.15 Failure to comply with civil penalty or to appear; penalty.--

(1)(a) If a person fails to comply with the civil penalties provided in s. 318.18 within the time period specified in s. 318.14(4), fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court shall notify the Division of Driver Licenses of the Department of Highway Safety and Motor Vehicles of such failure within 10 days after such failure. Upon receipt of such notice, the department shall immediately issue an order suspending the driver's license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). Any such suspension of the driving privilege which has not been reinstated, including a similar suspension imposed outside Florida, shall remain on the records of the department for a period of 7 years from the date imposed and shall be removed from the records after the expiration of 7 years from the date it is imposed.

(2) After suspension of the driver's license and privilege to drive of a person under subsection (1), the license and privilege may not be reinstated until the person complies with all obligations and penalties imposed on him or her under s. 318.18 and presents to a driver license office a certificate of compliance issued by the court, together with a nonrefundable service charge of up to $47.50 imposed under s. 322.29, or presents a certificate of compliance and pays the aforementioned service charge of up to $47.50 to the clerk of the court or tax collector clearing such suspension. Of the charge collected by the clerk of the court or the tax collector, $10 shall be remitted to the Department of Revenue to be deposited into the

Highway Safety Operating Trust Fund. Such person shall also be in compliance with requirements of chapter 322 prior to reinstatement.

Section 7. For the purpose of incorporating the amendment made by this act to section 318.18, Florida Statutes, in a reference thereto, subsection (7) of section 318.21, Florida Statutes, is reenacted to read:

318.21 Disposition of civil penalties by county courts.--All civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly as follows:

(7) For fines assessed under s. 318.18(3) for unlawful speed, the following amounts must be remitted to the Department of Revenue for deposit in the Nongame Wildlife Trust Fund:

For speed exceeding the limit by:	Fine:
1-5 m.p.h.	$ .00
6-9 m.p.h.	$ .25
10-14 m.p.h.	$ 3.00
15-19 m.p.h.	$ 4.00
20-29 m.p.h.	$ 5.00
30 m.p.h. and above.	$10.00

The remaining amount must be distributed pursuant to subsections (1) and (2).

Section 8. For the purpose of incorporating the amendment made by this act to section 318.18, Florida Statutes, in a

reference thereto, paragraph (b) of subsection (4) of section 402.40, Florida Statutes, is reenacted to read:

402.40 Child welfare training.--

(4) CHILD WELFARE TRAINING TRUST FUND.--

(b) One dollar from every noncriminal traffic infraction collected pursuant to s. 318.14(10)(b) or s. 318.18 shall be deposited into the Child Welfare Training Trust Fund.

Section 9. For the purpose of incorporating the amendment made by this act to section 318.18, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 985.406, Florida Statutes, is reenacted to read:

985.406 Juvenile justice training academies established; Juvenile Justice Standards and Training Commission created; Juvenile Justice Training Trust Fund created.--

(4) JUVENILE JUSTICE TRAINING TRUST FUND.--

(b) One dollar from every noncriminal traffic infraction collected pursuant to ss. 318.14(10)(b) and 318.18 shall be deposited into the Juvenile Justice Training Trust Fund.

Section 10. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. \(for drafter's use only)

Bill No. **1465 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Altman offered the following:

Amendment (with title amendment)

Remove lines 44 through 52 and insert:

(1) It is the intent of the Legislature to prevent vehicular fatalities by prioritizing enforcement on segments of highways that have a high incidence of speed related crashes. Enforcement shall also be prioritized during the times that speed related crashes most often occur. The enforcement of these zones shall be in a way that maximizes public safety.

(2) No later than July 1, 2007, the Department of Transportation shall identify enhanced penalty zones on state roads in Brevard, Duval, and St. Johns counties as a pilot program in an effort to reduce speed related crashes on state roads. This pilot program shall stand repealed July 1, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

Amendment No. (for drafter's use only)

22

23 ========== T I T L E A M E N D M E N T ==========

24 Remove lines 8 and 9 and insert:

25 providing for establishment of a pilot program by the Department

26 of Transportation of enhanced penalty zones on state roads in

27 certain counties;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **1465 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Altman offered the following:

Amendment (with title amendment)

Remove lines 94 through 123 and insert:

(d) A person cited for exceeding the speed limit in a posted construction zone, which posting must include notification of the speed limit and the doubling of fines, shall pay a fine double the amount listed in paragraph (b). The fine shall be doubled for construction zone violations only if construction personnel are present or operating equipment on the road or immediately adjacent to the road under construction.

(e) A person cited for exceeding the speed limit in an enhanced penalty zone shall pay a fine amount of $50 plus the amount listed in paragraph (b). Notwithstanding paragraph (b), a person cited for exceeding the speed limit by up to 5 m.p.h. in a legally posted enhanced penalty zone shall pay a fine amount of $50.

Amendment No. (for drafter's use only)

22

23 ================ T I T L E A M E N D M E N T ==========

24 Remove lines 22 and 26 and insert:

25 318.18, F.S.; providing penalties for violation of posted speed

26 in an enhanced penalty zone; amending s. 318.21, F.S.;

27 correcting

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

Bill No. 1465 CS

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Harrell offered the following:

Amendment (with directory and title amendments)

between lines 141 and 142 and insert:

(6) Of the additional fine assessed under s. 318.18(3) (e) for a violation of s. 316.1893, fifty percent of the moneys received from the fines shall be appropriated to the Agency for Health Care Administration as General Revenue to develop enhanced service for individuals, within the county limits of the pilot program, with brain and spinal cord injuries. The remaining fifty percent of the moneys received from the enhanced fine imposed by this paragraph shall be remitted to the Department of Revenue and deposited into the Department of Health Administrative Trust Fund to provide financial support to certified trauma centers, within the county limits of the pilot program, to ensure the availability and accessibility of trauma services. Funds deposited into the Administrative Trust Fund under this paragraph shall be allocated as follows:

a. fifty percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

b. fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as reported in the Department of Health Trauma Registry.

========== D I R E C T O R Y A M E N D M E N T ==========

Remove line 125 and insert:

Florida Statutes, are amended and a new subsection (6) is added to that section to read:

========== T I T L E A M E N D M E N T ==========

Remove line 27 and insert:

cross-references to conform to changes in the act; providing for the disposition of penalties;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1589 CS Specialty License Plates
SPONSOR(S): Smith
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2238

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	14 Y, 1 N, w/CS	Thompson	Miller
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1589 creates the "Support Homeownership For All" specialty license plate, and establishes an annual use fee of $25 to be paid by purchasers in addition to license taxes and fees. The annual use fee will be distributed to Homeownership For All, Inc., to promote and market the license plate and to fund programs that provide, promote, or otherwise support affordable housing. Homeownership For All, Inc., the Florida non-profit corporation seeking authority for this plate, has submitted the information and application fee required by current law.

The bill also makes corrective and administrative changes to a number of existing specialty license plates:

- The bill changes the word "College" to "University" on the Florida Memorial College license plate;
- The bill provides for the allocation of 10 percent of the annual use fee from the Keep Kids Drug-Free license plates to be used for marketing and administrative costs directly related to the Keep Kids Drug-Free license plate; and
- The bill allows the Sportsmen's National Land Trust to retain 50 percent of the proceeds from the Florida Sportsmen's National Land Trust license plate until all of the startup costs for developing and establishing the plate have been recovered.

The fiscal impact of the bill of approximately $60,000 on the Department of Highway Safety and Motor Vehicles (DHSMV) for implementation of the new specialty license plate will be offset by the application fees paid to DHSMV by the sponsoring organization.

The bill will take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill appears to increase government because it requires DHSMV to develop and provide for the manufacture of a new license plate, and therefore requires county tax collectors offices to maintain an appropriate inventory and administer the new plate.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Background on Specialty License Plates

Currently, specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from $15 to $25, paid in addition to required license taxes and service fees, are distributed to an organization or organizations in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization. Under s. 320.08053, F.S., an organization may seek Legislative authorization for a new specialty license plate by meeting a number of requirements.

An organization is first required to submit to the Department of Highway Safety and Motor Vehicles (DHSMV):

- A request for the plate describing it in general terms;
- The results of a professional, independent, and scientific sample survey of Florida residents indicating that 15,000 vehicle owners intend to purchase the plate at the increased cost;
- An application fee of up to $60,000 defraying DHSMV's cost for reviewing the application, developing the new plate, and providing for the manufacture and distribution of the first run of plates; and
- A marketing strategy for the plate and a financial analysis of anticipated revenues and planned expenditures.

These requirements must be satisfied at least 90 days prior to the convening of the regular session of the Legislature. Once the requirements are met, DHSMV notifies the committees of the House of Representatives and Senate with jurisdiction over the issue, and the organization is free to find sponsors and pursue Legislative action.

If a proposed specialty plate fails to be enacted by the Legislature, DHSMV returns the application fee and other required documents to the organization. If it passes and becomes law, DHSMV notifies the organization, modifies its computer programming to accommodate the new plate, and requests the laminate manufacturer, 3M Company, to produce a prototype roll-coat. PRIDE, the contracted manufacturer of license plates, embosses and roll-coats sample plates that must be submitted to FHP, the Governor, and the Cabinet for approval. Once approval is given, PRIDE begins full production of the plates and distributes them to the Tax Collectors' Offices for sale to the public.

Discontinuance of an approved specialty license plate occurs only when the number of valid registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter is to be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 1,000 plates. According to DHSMV there are currently twenty-two plates that are not meeting the minimum sales requirement and could be discontinued in 2006 if their sales do not increase. If none of these plates meet the minimum sales requirement by next summer, the number of plates offered for sale could be reduced to seventy-eight.

Funds derived from these annual use fees are distributed to an organization or organizations in support of a particular cause or charity signified on the plate's design and designated in s. 320.08058, F.S. This section also provides for the uses of funds derived for each plate from its annual use fee. There is wide variation on the uses of these fees regarding administrative costs and marketing or promotion expenses. For example, the "Support Soccer" license plate allows 25 percent of funds to be used for promotion and marketing and 5 percent to be used for administrative costs; while the "United We Stand" license plate requires that 100 percent of funds be used for airport security grants.

The Legislature has enacted 106 specialty license plates to date, though only 100 are currently available for purchase. Annual use fees for sales of specialty license plates for 2003-2004 totaled $26,168,581 and for fiscal year 2004-2005 the total was $29,049,472.90. Since the program's inception in 1986, the DHSMV has collected annual use fees totaling more than $280 million.

Florida Memorial College License Plate
The Florida Memorial College license plate was created by the legislature in 1999. The license plate ranks 74th in popularity among license plates currently issued. The Florida Memorial College specialty license plate raised $32,850 in calendar year 2004, with $148,000 raised from 1999 to 2004. Florida Memorial College is a four-year, private, coed, liberal arts college affiliated with the Baptist Church. The school became a four-year college and awarded its first bachelor's degree in 1949. In 1950, this college was renamed Florida Normal and Industrial Memorial College. The present name, Florida Memorial College, was acquired in 1963. In 2005, Florida Memorial College reached University status by offering graduate level courses.

Keep Kids Drug-Free License Plate
The Keep Kids Drug-Free license plate was created by the legislature in 1988. This license plate ranks 36th in popularity among license plates currently issued. The Keep Kids Drug-Free license plate raised $295,175 in calendar year 2004, with $1.4 million raised from 1999 to 2004. Currently, the Keep Kids Drug-Free license plate is not authorized to use any portion of the license plate proceeds for administrative, marketing or promotional costs.

Sportsmen's National Land Trust License Plate
The Sportsmen's National Land Trust license plate was created by the legislature in 2004. The license plate ranks 63rd in popularity among license plates currently issued. The Sportsmen's National Land Trust specialty license plate raised $62,8000 in calendar year 2004. Currently the annual use fees for the Sportsmen's National Land Trust license plates are distributed to The Sportsmen's National Land Trust who retains 50 percent of the proceeds until 50 percent of all startup costs for developing and establishing the plate have been recovered.

Effect of Proposed Changes

HB 1589 creates the "Support Homeownership For All" specialty license plate, and establishes an annual use fee of $25 to be paid by purchasers in addition to license taxes and fees. The annual use fee will be distributed to Homeownership For All, Inc., to promote and market the plate and to fund programs that provide, promote, or otherwise support affordable housing. Homeownership For All, Inc., the Florida non-profit corporation seeking authority for this plate, has submitted the information and application fee required by current law.

The bill also makes corrective and administrative changes to a number of existing specialty license plates:

- The bill changes the word "College" to "University" on the Florida Memorial College license plate;
- The bill provides for the allocation of 10 percent of the annual use fee from the Keep Kids Drug-Free license plates to be used for marketing and administrative costs directly related to the Keep Kids Drug-Free license plate; and

- The bill allows the Sportsmen's National Land Trust to retain 50 percent of the proceeds from the Florida Sportsmen's National Land Trust license plate until all of the startup costs for developing and establishing the plate have been recovered.

C. SECTION DIRECTORY:

Section 1. Amends s. 320.08056, F.S., changing the word "College" to "University" on the Florida Memorial College license plate, and providing for a $25 annual use fee for the "Support Homeownership For All" license plate.

Section 2. Amends s. 320.08058, F.S., authorizing the use of 10 percent of the proceeds from the Keep Kids Drug-Free license plate annual use fee to be used for administrative and marketing costs of the plate; conforming provisions relating to the Florida Memorial University license plate; and revising the authorized uses of the Sportsmen's National Land Trust license plate proceeds; creating the "Support Homeownership For All" license plate; providing for plate design; and providing for distribution and uses of annual use fees;

Section 4. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS section below.

2. Expenditures:

   See FISCAL COMMENTS section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who elect to purchase the "Support Homeownership For All" specialty license plates, will be required to pay an annual use fee of $25 in addition to applicable license taxes and administrative charges. The fee from the "Support Homeownership For All" license plate will be distributed to Homeownership For All, Inc., a Florida non-profit corporation. Up to 10 percent of the proceeds from the sale of this license plate will fund Homeownership For All, Inc. promotional and marketing costs of the plate and the remaining proceeds are to be used to fund programs that provide, promote, or otherwise support affordable housing in the state. Since it is impossible to determine how many persons will purchase the plates, it is impossible to determine the aggregate impact on the private sector.

The Keep Kids Drug-Free Foundation, Inc. will be allowed to use up to 10 percent of its specialty license plate's proceeds for marketing and administrative costs. Currently, all proceeds must be used to fund substance abuse prevention programs.

The Sportsmen's National Land Trust, Inc. will be authorized by the bill to recover all of its start-up costs for developing and establishing its plate. Current law allows the organization to recover 50 percent of its start-up costs.

D. FISCAL COMMENTS:

Implementation of HB 1589 w/CS will cost DHSMV approximately $60,000 in contract programming, development labor, and product purchasing costs for creation of the "Support Homeownership For All" license plate. This impact is offset by the statutory application fee of $60,000, which has been submitted to DHSMV by the organization seeking creation of the specialty license plate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On **March 28, 2006** the Transportation Committee adopted a strike-all amendment to HB 1589. The bill as originally filed created the "Homeownership For All" specialty license plate, but did not address any other license plates. The amendment provided the following changes:

- Creates the "Support Homeownership for All" specialty license plate, establishes an annual use fee of $25 which will be distributed to Homeownership For All, Inc., to promote and market the plate and to fund programs that support affordable housing,
- Changes the word "College" to "University" on the Florida Memorial College license plate,
- Provides for the allocation of 10 percent of the annual use fee from the Keep Kids Drug-Free license plates, to be used for marketing and administrative costs directly related to the Keep Kids Drug-Free plate, and
- Authorizes the Sportsmen's National Land Trust to retain 50 percent of the proceeds from the Florida Sportsmen's National Land Trust license plate until all of the startup costs for developing and establishing the plate have been recovered.

The committee then voted 14-1 to report the bill favorably with committee substitute.

CHAMBER ACTION

The Transportation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to specialty license plates; amending s. 320.08056, F.S.; revising specialty license plate use fee provisions to change a name; establishing an annual use fee for the Homeownership for All license plate; amending s. 320.08058, F.S.; revising authorized uses of the use fees received from sales of the Keep Kids Drug-Free license plate; changing the name of the Florida Memorial College license plate to the Florida Memorial University license plate; revising authorized uses of the use fees received from sales of the Sportsmen's National Land Trust license plate; creating the Homeownership for All license plate and providing for distribution of the fees received from sales of the plate; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (z) of subsection (4) of section 320.08056, Florida Statutes, is amended, and paragraph (eee) is added to that subsection, to read:

320.08056 Specialty license plates.--

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

(z) Florida Memorial University ~~College~~ license plate, $25.

(eee) Homeownership for All license plate, $25.

Section 2. Subsections (23), (26), and (48) of section 320.08058, Florida Statutes, are amended, and subsection (57) is added to that section, to read:

320.08058 Specialty license plates.--

(23) KEEP KIDS DRUG-FREE LICENSE PLATES.--

(a) The department shall develop a Keep Kids Drug-Free license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "Keep Kids Drug-Free" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to the Keep Kids Drug-Free Foundation, Inc., which shall use the fees to fund activities to reduce substance abuse among residents of this state. The foundation shall develop a plan to distribute the funds for drug-abuse prevention programs.

(c) Notwithstanding s. 320.08062, up to 10 percent of the proceeds from the annual use fee may be used for marketing the Keep Kids Drug-Free license plate and for administrative costs directly related to the management and distribution of the proceeds.

(26) FLORIDA MEMORIAL UNIVERSITY ~~COLLEGE~~ LICENSE PLATES.--

(a) The department shall develop a Florida Memorial University ~~College~~ license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "Florida Memorial University ~~College~~" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to Florida Memorial University ~~College~~.

(48) SPORTSMEN'S NATIONAL LAND TRUST LICENSE PLATES.--

(a) The department shall develop a Sportsmen's National Land Trust license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "Sportsmen's National Land Trust" must appear at the bottom of the plate.

(b) The annual revenues from the sales of the license plate shall be distributed to the Sportsmen's National Land Trust. Such annual revenues must be used by the trust in the following manner:

1. Fifty percent may be retained until ~~fifty percent of~~ all startup costs for developing and establishing the plate have been recovered.

2. Twenty-five percent must be used to fund programs and projects within the state that preserve open space and wildlife habitat, promote conservation, improve wildlife habitat, and establish open space for the perpetual use of the public.

3. Twenty-five percent may be used for promotion, marketing, and administrative costs directly associated with operation of the trust.

(c) When the provisions of subparagraph (b)1. are met, those annual revenues shall be used for the purposes of subparagraph (b)2.

(57) HOMEOWNERSHIP FOR ALL LICENSE PLATES.--

(a) The department shall develop a Homeownership for All license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "Homeownership for All" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to Homeownership for All, Inc., which may use a maximum of 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds shall be used by Homeownership for All, Inc., to fund programs that provide, promote, or otherwise support affordable housing in this state.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7031 PCB TURS 06-01 Department of State
SPONSOR(S): Tourism Committee and Rep. Detert
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Tourism Committee	7 Y, 0 N	McDonald	McDonald
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) State Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Prior to 1988, funding for cultural and historical grants programs came primarily from the General Revenue Fund and a small percentage from federal grants. From 1988 through 1995, changes were made in law that increased the number of grant programs, as well as those that would receive funding from the Corporations Trust Fund in the Department of State. On October 1, 2001, an additional $2 million was authorized for cultural grants based on revenues collected through the processing of judgment liens under s. 55.209, F.S. Chapter 2003-401, Laws of Florida, repealed the Corporations Trust Fund and directed all of the funds be deposited into the General Revenue Fund. Beginning in fiscal year 2003-2004, grants again have been funded primarily from the General Revenue Fund.

The bill amends the requirement in s. 15.09 (4), F.S., that all funds collected by the Division of Corporations be deposited in the General Revenue Fund to require certain reinstatement fees, late fees, and penalties be deposited into the Florida Fine Arts Trust Fund to fund cultural program grants, historic preservation matching grants, and historical museum grants. Additionally, the bill provides that any funds deposited that are above the amounts specified for the cultural, historic preservation, and historical museum grants will be used to fund the Cultural Endowment Program. If funds should fall below the amount specified to fund the cultural, historic preservation, and historical museum grants, the amount of funds available will be reduced proportionally. Specifically, the bill provides a dedicated funding source with the amount of monies to be provided to the various categories of grants as follows:

- $2 million for the purpose of funding historic preservation matching grants under s. 267.0617, F.S.
- $1.75 million for the purpose of funding historical museum grants under s. 267.0619, F.S.
- $14.3 million for the purpose of funding cultural grants under ss. 265.286, 265.2861, 265.608, and 265.609, F.S.
- Any remaining funds will be used to provide state matching funds for the Cultural Endowment Program under ss. 265.601-265.606, F.S.

The bill will reduce the amount of funding being deposited into the General Revenue Fund by an estimated $21.85 million (see "Fiscal Comments").

The bill amends provisions relating to cultural endowments by removing an audit requirement to conform to Single Audit Act, and to provide for the return of the state portion of the endowment to fund other cultural endowments in lieu of reverting to the General Revenue Fund. The bill also revises report and meeting dates for the Discovery of Florida Quincentennial Commemoration Commission. The effective date of the bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Department of State Cultural and Historical Grants:

Cultural Grants

The Division of Cultural Affairs in the Department of State is responsible for managing Florida's cultural grant programs. The division is assisted in carrying out its duties by advisory groups. The Florida Arts Council, a 15-member advisory board appointed by the Governor, President of the Senate, and Speaker of the House of Representatives, advises the Secretary of State on the distribution of grant awards. The Secretary appoints "Grant Review Panels," composed of artists, arts-related professionals and community cultural leaders, to evaluate requests for funds and make recommendations to the Florida Arts Council. The grants can be divided into fixed capital grants, cultural endowment grants, and program grants.

The fixed capital programs consist of the cultural facilities grants under s. 265.701, F.S., and the regional cultural facilities grants under s. 265.702, F.S.

The cultural endowment grants are provided through the Cultural Endowment Program, under ss. 265.601-265.606, F.S., which provides a state match of $240,000 to a qualifying organization that provides a match of $360,000 for the establishment of an endowment, the interest from which is to be used for operation costs. Currently, 32 qualified organizations are on a waiting list for the Cultural Endowment Program.

All other grants are program grants governed by ss. 265.286, 265.2861, 265.608, and 265.609, F.S. These program grants are briefly described below:

International Cultural Exchange (s. 265.286, F.S.) – Provides assistance for international cultural exchange projects of outstanding artistic and cultural merit.

Challenge Grant Program (s. 265.286, F.S.) – Supports significant projects designed as a new initiative, or a program of an innovative or unique nature and is not intended for continuation programming.

Statewide Arts Grants (s. 265.2861, F.S.) –

- *Quarterly Assistance Grants* promote professional development for arts organizations within five specified funding categories.
- *Underserved Arts Communities Assistance Grants* foster the development of arts organizations that are considered underserved in terms of their rural geography, minority composition, or lack of access to arts information or other program-based resources.
- *Discipline-based Arts Grants* (dance, folk arts, interdisciplinary, literature, media arts, multidisciplinary, music, sponsor/presenter, theater, and visual arts) foster excellence and diversity in the arts for all Floridians. Through general program support and specific grants,

the program is dedicated to funding not-for-profit proposals that promote excellence in the arts and make such excellence accessible for community-wide audiences.
- *Individual Artist Fellowships* recognize practicing, professional, creative Florida artists and provide support for those artists of exceptional talent and demonstrated ability to improve their artistic skills and advance their careers.

Arts in Education Grant (s. 265.2861, F.S.) – Makes life-long learning and quality educational opportunities in the visual, performing, and literary arts available for Florida's citizens and visitors. Grants are offered under funding components such as Artists Residencies, Partnerships, and School-based Arts Education.

State Touring Grant (s. 265.2861, F.S.) – Brings the state's finest performing arts groups to as many Florida communities as possible by providing fee support to the presenters of touring companies selected. Priority consideration is given to presenters serving small counties.

Local Arts Agency/State Service Organization Grant (s. 265.2861, F.S.) – Provides general program support to assist in developing their services and programs for local communities or for disciplinary and special needs constituencies.

Cultural Institutions Program Grants (s. 265.2861, F.S.) – Recognizes Florida's cultural institutions that have displayed a sustained commitment to cultural excellence and have made superior cultural contributions to the state. Grants awarded consider sustained level of artistic/cultural excellence, fiscal stability, governance and management, programs and exhibitions, audience and community support, public outreach programs, and educational programs.

Science Museum Program (s. 265.608, F.S.) – Provides support to public or private nonprofit institutions operating for the primary purpose of sponsoring, producing, and exhibiting programs for the observation and study of various types of natural science and science technology.

Youth and Children's Museum Program (s. 265.609, F.S.) – Provides support to public or private nonprofit institutions operating for the primary purpose of sponsoring, producing, and exhibiting multidisciplinary, participatory programs oriented toward visitors ages 6 months through 15 years and their families, teachers and caregivers.

Historical Grants

The Division of Historical Resources (the division) in the Department of State is charged with encouraging the identification, evaluation, protection, preservation, collection, conservation and interpretation of, and public access to, information about Florida's historic sites, properties and objects related to Florida historical, archaeological and folk cultural heritage. The responsibilities related to historic preservation are not only governed by state law but also by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470). The division administers public information programs, the statewide historic preservation plan, the operation of historic sites and properties, and state and federal grants for historic preservation. Its duties also include the maintenance and operation of Florida's Folklife Program and administration of various archaeological research and preservation programs.

The Florida Historical Commission, appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, performs very specific advisory duties related to historic preservation in the state and to the actions and activities of the division. The Commission is responsible for evaluating, making recommendations on, and placing in priority ranking proposals for awards of "special category historic preservation grants-in-aid" administered by the division. These are submitted to the Secretary of State for submission to the Governor and the Legislature. These particular fixed capital grants are to assist major archaeological excavations, large restoration projects

at historic structures, and major museum exhibit projects involving the development and presentation of information on the history of Florida.

The Secretary of State appoints grant review panels, chaired by a member of the Florida Historical Commission or a designee appointed by the Commission's presiding officer, to review and rank other historic preservation grants-in-aid and historical museum grants.

A description of those types of grants follows:

Historic Preservation Grants (s. 267.0617, F.S.) – The grants program consists of three sub-categories: acquisition and development, survey and planning, and community education. The program assists and encourages the identification, excavation, protection, rehabilitation and public knowledge of historic and archaeological properties in the state. Federal funding augments the state funding provided for these grants.

Historical Museum Grants (s. 267.0619, F.S.) –The grants program provides funding for the development of education exhibits relating to the history of Florida and to assist Florida history museums with basic operational costs. There are two separate grants under this program:

a. *General Operating Support Museum Grants* – Underwrites technical, curatorial, administrative, and educational costs associated with daily management of museum facilities. Nonprofit Florida history museums that are not agencies of the state are eligible.

b. *Public Educational Exhibit Museum Grants* – Provides grants to support development and presentation of exhibitions through text, graphic, or audiovisual elements; artifacts; and educational components. Units of local government, departments or agencies of the state, and public or private profit or non-profit corporations, partnerships, or other organizations are eligible to apply for these grants.

Funding of Cultural and Historical Grants

Prior to 1988, funding for cultural and historical grants programs came primarily from the General Revenue Fund and a small percentage from federal grants. From 1988 through 1995, changes were made in law that increased the number of grant programs, as well as those that would receive funding from the Corporations Trust Fund in the Department of State. Dedicated sources from the Corporations Trust Fund were primarily from a $10 fee on corporate annual reports, a portion of fees collected from fictitious name filings, and a transfer of penalty fees assessed on "foreign" corporations. On October 1, 2001, an additional $2 million was authorized for cultural grants based on revenues collected through the processing of judgment liens under s. 55.209, F.S. The historical grants had specific provisions identifying amounts from the Corporations Trust Fund to be transferred to fund both the museum and preservation grants.

Chapter 2003-401, Laws of Florida, repealed the Corporations Trust Fund and directed all of the funds be deposited into the General Revenue Fund. No funds, therefore, were directed into the Cultural Institutions Trust Fund for funding of the grants programs in fiscal year 2003-2004. In 2004, the Legislature passed SB 976 which re-created the Cultural Institutions Trust Fund that was scheduled to repeal on November 4, 2004. On June 23, 2004, the bill was vetoed by the Governor.

Prior to the repeal of the Corporations Trust Fund, the appropriations for the grants for fiscal year 2002-2003 was approximately $18.1 million. Since the repeal of the Trust Fund, funds have been appropriated from the General Revenue Fund and associated federal funds for the grants for fiscal years 2003-2006. The total funding for grants for those years was approximately $8.2 million, $12.1 million, and $16.2 million, respectively.[1]

[1] The funding amounts do not include funding provided for the Florida Endowment for the Humanities. The fiscal year 2002-2003 amount also does not include $500,000 that was provided for the Coconut Grove Playhouse.

Cultural Endowment Program (ss. 265.601 – 265.606, F.S.):

The Cultural Endowment Program, described above in the section on cultural grants, requires a qualifying organization to return the $240,000 state match for the endowment if the organization ceases to exist, files for protection under federal bankruptcy, or willfully expends any portion of the endowment principal. Funds that are returned are required to revert to the General Revenue Fund. The Department of State has expressed concern that the criteria should be broadened to encompass other conditions under which the organization is no longer able to manage the endowment.

Section 265.606(4), F.S., requires the sponsoring organization to submit an annual audit explaining how endowment program funds were used and requires that the organization submit an annual postaudit of its financial accounts by an independent certified public accountant. The Department of State has expressed concern that the second audit requirement is in violation of the Florida Single Audit Act, s. 215.97, F.S., which requires a coordination of auditing efforts when entities are receiving funding from various state agencies. The law also refers to determinations for the primary agency of responsibility for audits. Determinations are based upon thresholds of funding.

Discovery of Florida Quincentennial Commemoration Commission:

In the 2004 Legislative Session, the Department of State and the Division of Historical Resources were given additional responsibilities through the creation of the Discovery of Florida Quincentennial Commemoration Commission which was placed within the department.[2] The purpose of the Commission is to plan and lead the commemoration of Juan Ponce de Leon's discovery of Florida. This is to be done through the development and implementation of a statewide master plan. The law provides for appointment of a Commission and authorizes specific powers and duties relative to the development and implementation of the master plan. Special subcommittees are permitted and an advisory committee is required to assist the Commission in its responsibilities. The Commission must hold its initial meeting no later than January 2007 to organize and begin its work. By January 2008 an initial draft of the master plan must be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives. The master plan must be completed by January 2009. Department and division responsibilities include, but are not limited to, establishment of a citizens support organization to assist in the development and implementation of the master plan and administrative support and consulting services. The responsibilities of the department were contingent upon appropriation. No funding was provided for responsibilities to organize the initial meeting of the Commission, to pay per diem and travel for members, nor to pay for any other administrative costs associated with the Commission.

Effects of Proposed Changes:

Funding of Cultural and Historical Grants

The bill amends the requirement in s. 15.09 (4), F.S., that all funds collected by the Division of Corporations be deposited in the General Revenue Fund, to require certain reinstatement fees, late fees, and penalties collected be deposited into the Florida Fine Arts Trust Fund to fund cultural program grants, historic preservation grants, and historical museum grants. Additionally, the bill provides that any funds deposited that are above the amounts specified for the cultural, historic preservation, and historical museum grants will be used to fund the Cultural Endowment Program. If funds should fall below the amount specified to fund the cultural, historic preservation, and historical museum grants, the amount of funds available will be reduced proportionally.

According to the Division of Corporations of the Department of State, the sections of law cited in the bill to be used as a funding source for grants affect the following that are collected by the Division of Corporations:

[2] See Chapter 2004-91, L.O.F.

- Reinstatement fee for for-profit corporations – s. 607.0122(13), F.S.
- All fees owed by for-profit corporations upon reinstatement (such as annual report fees) – s. 607.1422(1), F.S.
- Consequences for foreign corporations transacting business in the state prior to obtaining authorization – s. 607.1502(4), F.S.
- For-profit corporations annual report late fee – s. 607.193(2)(b), F.S.
- Consequences for foreign limited liability companies transacting business in the state prior to obtaining authorization – s. 608.502, F.S.
- Reinstatement fee for not-for-profit corporations – s. 617.0122(13), F.S.
- All fees owed by not-for-profit corporations upon reinstatement – s. 617.1422(1), F.S.
- Reinstatement of not-for-profit corporations chartered by a county that failed to file for reinstatement with the Department of State in 1992, includes reinstatement fee plus annual report fees back to 1992 – s. 617.1623(1), F.S.

Specifically, the bill provides a dedicated funding source with the amount of funds to be provided to the various categories of grants as follows:

- $2 million for funding historic preservation grants under s. 267.0617, F.S.
- $1.75 million for funding historical museum grants under s. 267.0619, F.S.
- $14.3 million for funding cultural grants under ss. 265.286, 265.2861, 265.608, and 265.609, F.S.
- Any remaining funds will be used to provide state matching funds for the Cultural Endowment Program under ss. 265.601-265.606, F.S..

The grant review and selection process is not changed by the bill.

Cultural Endowment Program

The bill removes the requirement for the submission to the Department of State of an annual postaudit by the local sponsoring organization. The deletion of this additional audit requirement removes potential costs that would be incurred by the department for the audit.

The bill provides that if an organization receiving an endowment from the Cultural Endowment Program can no longer manage the endowment, the endowment funds would not revert to the General Revenue Fund, but to the Fine Arts Trust Fund. Those funds would then be used to fund the next organization on the Cultural Endowment Program priority list that has not previously received an endowment in the most current funding cycle.

Quincentennial Commemoration Commission

The bill also moves forward by one year the requirements for the first meeting of the Discovery of Florida Quincentennial Commemoration Commission, the initial draft of the master plan, and the submission of the master plan to the Legislature.[3]

C. SECTION DIRECTORY:

Section 1. Amends s. 15.09(4), F.S., relating to fees; providing an exception to the requirement that all funds collected by the Division of Corporations of the Department of State must be deposited in the General Revenue Fund; providing that certain reinstatement, late fees, and penalties collected be deposited in the Florida Fine Arts Trust Fund of the Department of State for the purpose of funding certain

[3] Section 267.174, F.S., requires that the initial meeting of the Commission be no later than January 31, 2007, the initial draft of the master plan be submitted to the Legislature by January 2008, and the master plan be submitted by January 2009. The quincentennial celebration will not be until 2013.

cultural grants, historical museum grants, and historic preservation matching grants at specified levels; providing that any additional funds be used to fund the Cultural Endowment Program; and, providing a procedure for funding specified programs, if proceeds collected fall below the amounts specified for disbursement according to the legislation.

Section 2. Amends s. 265.606, F.S., relating to the Cultural Endowment Program; deleting a requirement for a postaudit; revising reversion requirements for state funding portion of endowment.

Section 3. Amends s. 267.174, F.S., relating to the Discovery of Florida Quincentennial Commemoration Commission; revising dates.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   For fiscal year 2006-2007, the loss to the General Revenue Fund is expected to be at least $21.85 million in recurring funds (see "Fiscal Comments").

2. Expenditures:

   For fiscal year 2006-2007, the recurring expenditures are estimated to be as follows:

Cultural Grants	$14.30M
Historic Preservation Grants	$ 2.00M
Historical Museum Grants	$ 1.75M
Cultural Endowment	$ 3.80M
TOTAL	$21.85M

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There would be a positive economic impact on the arts, museum, and historical grant recipients, as well as the businesses that could be impacted by increased visitation to and participation in cultural and historical programs.

D. FISCAL COMMENTS:

The estimates provided above are based upon an average of the seven years of collections for the categories of funding sources cited in the bill. The actual total dollar amount could be slightly more or less than the $21.85 million projected. According to the Department of State, over the last seven years funds collected from the specified categories have been as follows: $19,506,224.10 in fiscal year 1998-1999; $18,925,589.42 in fiscal year 1999-20000; $24,449,422.80 in fiscal year 2000-2001; $22,604,991.98 in fiscal year 2001-2002; $21,205,292.84 in fiscal year 2002-2003; $23,396,601.85 in fiscal year 2003-2004; and, $22,862,607.37 in fiscal year 2004-2005.

Prior to the repeal of the Corporations Trust Fund, the appropriations for the grants for fiscal year 2002-2003 was approximately $18.1 million. Since the repeal of the Trust Fund, funds have been appropriated from the General Revenue Fund and associated federal funds for the grants for fiscal years 2003-2006. The total funding for grants for those years was approximately $8.2 million, $12.1 million, and $16.2 million, respectively.

The provision of a dedicated source of revenue as provided by the bill will have a potential positive fiscal impact on local governments. Many local governments receive funding through the cultural and historical program grants to be funded through the bill for local cultural programs, museums, and historical programs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None specified.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 7, 2006, the Tourism Committee unanimously passed PCB TURS 05-01 as amended. The two technical amendments to the proposed committee bill were as follows:

- On line 53, the name of the trust fund was corrected to reflect the appropriate trust fund into which money is to be deposited.
- The numbering of sections was corrected.

A bill to be entitled

An act relating to the Department of State; amending s. 15.09, F.S.; providing for deposit of certain reinstatement fees, late fees, and penalties collected by the Division of Corporations of the Department of State into the Florida Fine Arts Trust Fund rather than the General Revenue Fund; providing for disbursement of such revenues to fund cultural and historical preservation grants and programs; amending s. 265.606, F.S.; deleting a requirement for local sponsoring organizations to submit an annual postaudit to the Division of Cultural Affairs under certain circumstances; providing for the reversion of the state's matching share of cultural endowment to the Florida Fine Arts Trust Fund rather than the General Revenue Fund under certain circumstances; providing for distribution of reverted funds; amending s. 267.174, F.S.; changing the dates for the first meeting of the Discovery of Florida Quincentennial Commemoration Commission, the completion of the initial draft of a specified master plan, and the submission of the completed master plan; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 15.09, Florida Statutes, is amended to read:

15.09 Fees.--

(4)(a) Except as provided in paragraph (b), all funds

collected by the Division of Corporations of the department shall be deposited in the General Revenue Fund.

(b) All reinstatement fees, late fees, and penalties collected pursuant to ss. 607.0122(13), 607.1422(1), 607.1502(4), 607.193(2)(b), 608.502(4), 617.0122(13), 617.1422(1), and 617.1623(1) shall be deposited in the Florida Fine Arts Trust Fund and disbursed each fiscal year as follows:

1. The sum of $2 million shall be transferred to the Historical Resources Operating Trust Fund for the purpose of funding historic preservation matching grants pursuant to s. 267.0617.

2. The sum of $1.75 million shall be transferred to the Historical Resources Operating Trust Fund for the purpose of funding historical museum grants pursuant to s. 267.0619.

3. The sum of $14.3 million shall be used for the purpose of funding cultural grants as provided in ss. 265.286, 265.2861, 265.608, and 265.609.

4. Any remaining proceeds shall be used for the purpose of providing state matching funds for the Cultural Endowment Program as provided in s. 265.606.

If proceeds fall below the amounts required to be disbursed in subparagraphs 1. through 3., the spending authority provided in this paragraph for the Florida Fine Arts Trust Fund and the Historical Resources Operating Trust Fund shall be reduced proportionally.

Section 2. Subsections (4) and (5) of section 265.606, Florida Statutes, are amended to read:

265.606 Cultural Endowment Program; administration; qualifying criteria; matching fund program levels; distribution.--

(4) Once the secretary has determined that the sponsoring organization has complied with the criteria imposed by this section, he or she may authorize the transfer of the appropriate state matching funds to the organization. However, the secretary shall ensure that the local group has made prudent arrangements for the trusteeship of the entire endowment, and such trusteeship is hereby created. The sponsoring organization may then expend moneys in the endowment program fund, subject to the following requirements:

(a) The organization may expend funds only for operating costs incurred while engaged in programs directly related to cultural activities.

(b) The organization shall annually submit a report to the division, in such form as the division specifies, explaining how endowment program funds were utilized.

~~(c) Any contract administered under this section shall require the local sponsoring organization to submit to the division an annual postaudit of its financial accounts conducted by an independent certified public accountant.~~

(5) The $240,000 state matching fund endowment for each individual endowment shall revert to the Florida Fine Arts Trust Fund and shall be awarded to the first organization on the Cultural Endowment Program priority list pursuant to subsection (7), that has not previously received a cultural endowment in the most current fiscal year funding cycle, ~~General Revenue Fund~~

if any of the following events occurs:

(a) The recipient sponsoring organization is no longer able to manage an endowment ~~ceases operations~~.

(b) The recipient sponsoring organization files for protection under federal bankruptcy provisions.

(c) The recipient sponsoring organization willfully expends a portion of the endowment principal of any individual endowment.

Section 3. Paragraph (d) of subsection (5) and paragraph (c) of subsection (7) of section 267.174, Florida Statutes, are amended to read:

267.174 Discovery of Florida Quincentennial Commemoration Commission.--

(5) OFFICERS; BYLAWS; MEETINGS.--

(d) The initial meeting of the commission shall be held no later than July 31, 2008 ~~January 31, 2007~~. Subsequent meetings shall be held upon the call of the chair or vice chair acting in the absence of the chair, and in accordance with the commission's bylaws.

(7) DUTIES; MASTER PLAN.--

(c) The commission shall establish a timetable and budget for completion for all parts of the master plan which shall be made a part of the plan. An initial draft of the plan shall be completed and submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Secretary of State by May 2009 ~~January 2008~~ with the completed master plan submitted to such officials by May 2010 ~~January 2009~~.

Section 4. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7031**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative(s) Detert offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 265.285, Florida Statutes, is amended to read:

265.285 Florida Arts Council; membership, duties.--

(1)(a) The Florida Arts Council is created in the department as an advisory body, as defined in s. 20.03(7), to consist of 15 members. Seven members shall be appointed by the Governor, four members shall be appointed by the President of the Senate, and four members shall be appointed by the Speaker of the House of Representatives. The appointments, to be made in consultation with the Secretary of State, shall recognize the need for geographical representation. Council members appointed by the Governor shall be appointed for 4-year terms beginning on January 1 of the year of appointment. Council members appointed by the President of the Senate and the Speaker of the House of Representatives shall be appointed for 2-year terms beginning on

January 1 of the year of appointment. ~~Council members serving on July 1, 2002, may serve the remainder of their respective terms. New appointments to the council shall not be made until the retirement, resignation, removal, or expiration of the terms of the initial members results in fewer than 15 members remaining. As vacancies occur, the first appointment to the council shall be made by the Governor. The President of the Senate, the Speaker of the House of Representatives, and the Governor, respectively, shall then alternate appointments until the council is composed as required herein.~~ A ~~No~~ member of the council who serves two 4-year terms or two 2-year terms is not ~~will be~~ eligible for reappointment for 1 year ~~during a 1-year period~~ following the expiration of the member's second term. A member whose term has expired shall continue to serve on the council until such time as a replacement is appointed. Any vacancy on the council shall be filled for the remainder of the unexpired term in the same manner as for the original appointment. Members should have a substantial history of community service in the performing or visual arts, which includes, but is not limited to, theatre, dance, folk arts, music, architecture, photography, and literature. In addition, it is desirable that members have successfully served on boards of cultural institutions such as museums and performing arts centers or are recognized as patrons of the arts.

Section 2. Subsections (4) and (5) of section 265.606, Florida Statutes, are amended to read:

265.606 Cultural Endowment Program; administration; qualifying criteria; matching fund program levels; distribution.--

(4) Once the secretary has determined that the sponsoring organization has complied with the criteria imposed by this

section, he or she may authorize the transfer of the appropriate state matching funds to the organization. However, the secretary shall ensure that the local group has made prudent arrangements for the trusteeship of the entire endowment, and such trusteeship is hereby created. The sponsoring organization may then expend moneys in the endowment program fund, subject to the following requirements:

(a) The organization may expend funds only for operating costs incurred while engaged in programs directly related to cultural activities.

(b) The organization shall annually submit a report to the division, in such form as the division specifies, explaining how endowment program funds were utilized.

~~(c) Any contract administered under this section shall require the local sponsoring organization to submit to the division an annual postaudit of its financial accounts conducted by an independent certified public accountant.~~

(5) The $240,000 state matching fund endowment for each individual endowment shall revert to the Florida Fine Arts Trust Fund and shall be awarded to the first organization on the Cultural Endowment Program priority list pursuant to subsection (7) that has not previously received a cultural endowment in the most current fiscal year funding cycle ~~General Revenue Fund~~ if any of the following events occurs:

(a) The recipient sponsoring organization is no longer able to manage an endowment ~~ceases operations~~.

(b) The recipient sponsoring organization files for protection under federal bankruptcy provisions.

(c) The recipient sponsoring organization willfully expends a portion of the endowment principal of any individual endowment.

Section 3. Paragraph (d) of subsection (5) and paragraph (c) of subsection (7) of section 267.174, Florida Statutes, are amended to read:

267.174 Discovery of Florida Quincentennial Commemoration Commission.--

(5) OFFICERS; BYLAWS; MEETINGS.--

(d) The initial meeting of the commission shall be held no later than July 31, 2008 ~~January 31, 2007~~. Subsequent meetings shall be held upon the call of the chair or vice chair acting in the absence of the chair, and in accordance with the commission's bylaws.

(7) DUTIES; MASTER PLAN.--

(c) The commission shall establish a timetable and budget for completion for all parts of the master plan which shall be made a part of the plan. An initial draft of the plan shall be completed and submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Secretary of State by May 2009 ~~January 2008~~ with the completed master plan submitted to such officials by May 2010 ~~January 2009~~.

Section 4. Section 272.129, Florida Statutes, is amended to read:

272.129 Florida Historic Capitol; space allocation; maintenance, repair, and security.--

(1) The Legislature ~~Department of State~~ shall ensure ~~assure~~ that all space in the Florida Historic Capitol is restored in a manner consistent with the 1902 form and made available for allocation. Notwithstanding the provisions of ss. 255.249 and 272.04 that relate to space allocation in state-owned buildings, the President of the Senate and the Speaker of the House of Representatives shall have responsibility and

authority for the allocation of all space in the restored Florida Historic Capitol, provided:

(a) The rotunda, corridors, Senate chamber, House of Representatives chamber, and Supreme Court chamber shall not be used as office space.

(b) The Legislature ~~Department of State~~ shall be allocated sufficient space for program and administrative functions relating to the preservation, museum, and cultural programs of the Legislature ~~department~~.

(2) The Florida Historic Capitol shall be maintained in accordance with good historic preservation practices as specified in the National Park Service Preservation Briefs and the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

(3) ~~(2)~~ Custodial and preventive maintenance and~~,~~ repair~~,~~ ~~and security~~ of the entire Historic Capitol and the grounds located adjacent thereto shall be the responsibility of the Department of Management Services, subject to the special requirements of the building as determined by the Capitol Curator.

Section 5. Section 272.135, Florida Statutes, is amended to read:

272.135 Florida Historic Capitol Curator.--

(1) The position of Capitol Curator is created within the Legislature ~~Department of State~~, which shall establish the qualifications for the position. The curator shall be appointed by and serve at the pleasure of the President of the Senate and the Speaker of the House of Representatives ~~Secretary of State~~.

(2) The Capitol Curator shall:

(a) Promote and encourage throughout the state knowledge and appreciation of the Florida Historic Capitol.

(b) Collect, research, exhibit, interpret, preserve, and protect the history, artifacts, objects, furnishings, and other materials related to the Florida Historic Capitol, except for archaeological research and resources.

(c) Develop, direct, supervise, and maintain the interior design and furnishings of all space within the Florida Historic Capitol in a manner consistent with the restoration of the Florida Historic Capitol in its 1902 form.

~~(3) The Department of State shall promulgate rules to implement this section.~~

Section 6. Subsections (1) and (2) of section 607.193, Florida Statutes, are amended to read:

607.193 Supplemental corporate fee.--

(1) In addition to any other taxes imposed by law, an annual supplemental corporate fee of $88.75 is imposed on each business entity that is authorized to transact business in this state and is required to file an annual report with the Department of State under s. 607.1622, s. 608.452, or s. 620.1210 ~~620.177~~.

(2)(a) The business entity shall remit the supplemental corporate fee to the Department of State at the time it files the annual report required by s. 607.1622, s. 608.452, or s. 620.1210 ~~620.177~~.

(b) In addition to the fees levied under ss. 607.0122, 608.452, and 620.1109 ~~620.182~~ and the supplemental corporate fee, a late charge of $400 shall be imposed if the supplemental corporate fee is remitted after May 1 except in circumstances in which a business entity did not receive the uniform business report prescribed by the department.

Section 7. This act shall take effect July 1, 2006.

178

179 ================= T I T L E A M E N D M E N T =================

180 Remove the entire title and insert:

181 A bill to be entitled

182 An act relating to the Department of State; amending s
183 265.285, F.S.; specifying a beginning date for the terms
184 of appointees to the Florida Arts Council; amending s.
185 265.606, F.S.; deleting a requirement for local sponsoring
186 organizations to submit an annual postaudit to the
187 Division of Cultural Affairs under certain circumstances;
188 providing for the reversion of the state's matching share
189 of cultural endowment to the Florida Fine Arts Trust Fund
190 rather than the General Revenue Fund under certain
191 circumstances; providing for distribution of reverted
192 funds; amending s. 267.174, F.S.; changing the dates for
193 the first meeting of the Discovery of Florida
194 Quincentennial Commemoration Commission, the completion of
195 the initial draft of a specified master plan, and the
196 submission of the completed master plan; amending s.
197 272.129, F.S.; transferring responsibility for the Florida
198 Historic Capitol to the Legislature; providing for
199 allocation of certain space for preservation, museum, and
200 cultural programs of the Legislature; requiring the
201 maintenance of the Florida Historic Capitol pursuant to
202 certain historic preservation guidelines and standards;
203 deleting responsibility of the Department of Management
204 Services for security of the Historic Capitol and adjacent
205 grounds; amending s. 272.135, F.S.; requiring the Capitol
206 Curator to be appointed by the President of the Senate and
207 the Speaker of the House of Representatives; deleting
208 rulemaking authority of the Department of State to

conform; amending s. 607.193, F.S.; correcting cross-references; clarifying the existing late fee associated with a limited partnership or a foreign limited partnership filing; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7081 PCB GO 06-25 Administrative Procedures
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Brown	Williamson
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) State Administration Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill increases the Department of State's administrative responsibilities regarding the Florida Administrative Code and Florida Administrative Weekly website, requiring that the site contain several new features. The Department of State has estimated its costs of implementing the website provisions at $450,000 over a three-year period.

The bill modifies the Administrative Procedure Act as follows:

- Provides for a continuous review of agency rulemaking;
- Revises agency rulemaking duties regarding Notices of Change and forms incorporated by reference;
- Expands access to the Florida Equal Access to Justice Act to certain petitioners, by expanding the definition of "small business party" to include an individual whose net worth is less than $2M;
- Revises provisions relating to the timing and substance of petitions for administrative hearings;
- Requires the agency to make an explicit ruling on each exception filed by any party following the submission of a recommended order; and
- Requires the Division of Administrative Hearings and agencies to file certain reports with the Administration Commission and the Joint Administrative Procedures Committee.

The bill grants rulemaking authority to the Administration Commission for prescribing the form and substantive provisions of a protest bond.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires the Department of State to publish on an Internet website the Florida Administrative Weekly (FAW) accessible free of charge to the public, and to continue publishing the FAW in print format.

The bill increases the rulemaking authority of the Administration Commission for the limited purpose of prescribing the form and substantive provisions of bid-protest bonds.

B. EFFECT OF PROPOSED CHANGES:

Administrative Procedure Act

Background

The Administrative Procedure Act (APA)[1] allows persons substantially affected by the preliminary decisions of administrative agencies to challenge those decisions. The Division of Administrative Hearings (DOAH), which consists of an independent group of administrative law judges, conducts hearings under chapter 120, F.S., when certain agency decisions[2] are challenged by substantially affected persons.[3]

Current law provides that a person substantially affected by a rule or proposed rule may file a petition seeking an administrative determination of the invalidity of a rule or proposed rule on the ground that the rule is an invalid exercise of delegated legislative authority. It also provides a mechanism for a substantially affected person to seek an administrative determination that an agency statement of generally applicable policy should have been adopted as a rule.[4]

A party wishing to challenge an agency determination of his or her substantial interests must file a petition for hearing with the agency. The agency must then request, from DOAH, an administrative hearing within 15 days. The APA also provides notice and pleading requirements, and the time parameters within which a final order must be completed.[5]

Current law requires the Administration Commission[6] to enact uniform rules of procedure governing DOAH. These uniform rules of procedure are analogous to the Florida Rules of Civil Procedure, used by the judicial branch. Legislation passed in 1998[7] clarified that the uniform rules of procedure for the filing of all petitions for administrative hearing under ss. 120.569 or 120.57, F.S., must include:

- The identification of the petitioner;
- A statement of when and how the petitioner received notice of the agency's action or proposed action;
- An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action;
- A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts;

[1] Ch. 120, F.S.
[2] For example, rules and determinations of a party's substantial interest.
[3] DOAH proceedings are conducted like nonjury trials and are governed by chapter 120, F.S.
[4] Sec. 120.56, F.S.
[5] Sec. 120.569, F.S.
[6] The Governor and the Cabinet make up the members of the Administration Commission. Sec. 14.202, F.S.
[7] Ch. 1998-200, Laws of Florida, sec. 3.

- A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes;[8] and
- A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the agency to take with respect to the proposed action.[9]

There is a Joint Administrative Procedures Committee (JAPC), within the Legislature, made up of six members; three members of the House of Representatives and three members of the Senate. JAPC undertakes and maintains a systematic and continuous review of the statutes authorizing agencies to adopt rules. It makes recommendations to the appropriate standing committees of the Legislature regarding delegated legislative authority to adopt rules.[10]

Effect of Bill

Duties of JAPC

The bill requires JAPC to maintain a continuous review of statutes that authorize agencies to adopt rules and to make recommendations to appropriate standing committees. It removes the requirement that the committee "undertake a systematic review" of the statues. According to JAPC, it is a more efficient use of committee resources to review statutes in the course of the rule review process.

Agency Rulemaking

The bill locates all important rulemaking timeframes and deadlines in one section of the APA for improved accessibility. The bill also clarifies that an agency must file a Notice of Change after a final rulemaking hearing, if non-technical changes are made, and that the notice must be published in the FAW.

Appeal of Administrative Determinations

The bill further provides that the filing of a petition for administrative determination of a proposed rule must toll the 90-day period during which a rule must be filed for adoption until 30 days after rendition of the final order, or until any judicial review of the final order is complete. Unless the decision of the administrative law judge is reversed on appeal, the proposed rule or provision of a proposed rule declared invalid will not be adopted. It clarifies that the term "administrative determination" does not include subsequent judicial review.

Petitions for Administrative Hearing

The bill grants rulemaking authority to the Administration Commission in order to create a separate set of pleading requirements for those hearings filed by the respondent in an agency enforcement or disciplinary action. Uniform rules for this type of request require:

- The name, address and telephone number of the party making the request and the name, address and telephone number of the party's counsel or qualified representative upon whom service of pleadings and other papers will be made;
- A statement that the respondent is requesting an administrative hearing and disputes the material facts alleged by the petitioner, in which case the respondent must identify those material facts that are in dispute, or that the respondent is requesting an administrative hearing and does not dispute the material facts alleged by the petitioner; and

[8] The underlined text was not part of the 1998 amendment, but was inserted by chapter 2003-94, Laws of Florida, sec. 2.
[9] Sec. 120.54(5)(b)4., F.S.
[10] Sec. 11.60, F.S.

- A reference by file number to the administrative complaint that the party has received from the agency, and the date on which the agency pleading was received.

The pleading requirements are codified in the Florida Administrative Code at Uniform Rule 28-107.004(3), F.A.C., which was promulgated *before* the 1998 legislative amendment. The rulemaking authority granted to the Administration Commission serves to resolve the confusion between rule and statute.

Equitable Tolling

The bill extends the deadline for filing a petition, if the petitioner has:

- Been misled or lulled into action;
- In some extraordinary way been prevented from asserting his or her rights; or
- Timely asserted his or her rights mistakenly in the wrong forum.

As reported by JAPC, these changes address concerns expressed in recent judicial decisions and by the administrative law judges and practitioners.

Bid Protest Bonds

The bill provides rulemaking authority to the Administration Commission for the purpose of prescribing the form and substantive provisions of a bond required pursuant to a bid protest. According to JAPC, the Administration Commission already has adopted such form; however, the commission did not have proper rulemaking authority. This change merely puts the commission's rule in compliance with the Florida Statutes.

Current law requires an agency to include in its notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase the following statement: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes." The bill requires that the notice also state that "failure to post the bond or other security required by law within the time allowed for filing a bond" constitutes a waiver of proceedings under the APA.

Final Orders

The bill provides additional requirements for final orders issued after a DOAH hearing under s. 120.57(1), F.S. The bill requires the agency to make an explicit ruling on each exception filed by any party after the recommended order is submitted by DOAH. The agency must report to DOAH its exceptions to the recommended order, and file a copy of the final order with DOAH.[11]

Agency and DOAH Reporting

The bill requires DOAH and agencies to file certain reports with the Administration Commission and JAPC. DOAH and agencies must issue recommendations regarding the types of cases that should be conducted by the summary hearing process in s. 120.574, F.S. DOAH must report on agency compliance with the requirement to file final orders and exceptions with the division within 15 days of issuance.

The bill requires each agency to file its report of the agency's formal rule review with JAPC in addition to the President of the Senate and the Speaker of the House of Representatives.[12] As with DOAH, the report must include recommendations regarding the types of cases that should be conducted by the summary hearing process.

[11] Sec. 120.57(1)(m), F.S.
[12] See s. 120.65(10), F.S.

Equal Access to Justice Act

The bill expands access to the Florida Equal Access to Justice Act, which allows certain small business owners to recover attorneys' fees when the agency action against the business entity is deemed not "substantially justified." The bill expands the definition of "small business party" to include individuals with a net worth of less than $2M, when the agency makes a claim against that individual's license rather than a claim against the business entity. This change appears to address *Daniels v. Fla. Dep't of Health*, SC 04-230 (Fla. 2005), in which the sole proprietor of an S-Corporation was deemed not a small business party because the agency's claim was made against the owner's individual license rather than against her corporate entity.[13]

Florida Administrative Weekly and Florida Administrative Code

Background

Current law requires the Department of State (DOS) to publish rulemaking and public meetings notices, and various other materials filed by the state's administrative agencies, in the *Florida Administrative Weekly* (FAW).[14] DOS contracts with LexisNexis Matthew Bender for publication of the FAW in a printed format.[15] The FAW is published on Fridays and distributed for free to administrative agencies, courts, libraries, law schools, and legislative offices. The FAW has approximately 369 paid subscribers.[16] In addition to the paper version, DOS also posts copies of the FAW on its Internet website accessible to the public free of charge.

DOS is required to publish the Florida Administrative Code (FAC), which contains all rules adopted by agencies, together with references to rulemaking authority and history notes. The FAC must be supplemented at least monthly.[17] DOS also contracts with LexisNexis Matthew Bender for the printing of the FAC.

Current law creates the Publication Revolving Trust Fund, and specifies that all fees and moneys collected by DOS under the Administrative Procedure Act (APA) be deposited in the fund for the purpose of paying for the publication of the FAC and FAW, and for associated costs incurred by DOS in administering APA requirements. Unencumbered balances at the beginning of each fiscal year, which exceed $300,000, are transferred to the General Revenue Fund.[18]

DOS is authorized to: (a) make subscriptions of the FAW available for a price computed as a pro rata share of 50 percent of the costs related to the publication of the FAW; and (b) charge agencies using the FAW a space rate (line charge) computed to cover a pro rata share of 50 percent of the costs related to publication of the FAW.[19] Subscription fees charged to FAW subscribers are retained by the publisher as compensation for printing the FAW. DOS does not receive royalties from FAW subscriptions.

Internet Publication Pilot Project

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[13] Circuit appeals courts previously split on allowing fees under the Equal Access to Justice Act for petitioners in this situation. The 1st and 3rd DCA denied such claims while recognizing the unfairness of the result; the 4th DCA allowed the fees.

[14] According to DOS, approximately 600 entities publish notices in the FAW. These entities include state agencies, other units of state and local governments, and nongovernmental entities. Email from Dep't. of State, Feb. 9, 2006.

[15] *Report on Internet Noticing of the Florida Administrative Weekly*, Florida Joint Administrative Procedures Committee, October 2003, pp. 2-3.

[16] Telephone conversation with Department of State, Administrative Code and Weekly Unit, February 10, 2006. DOS indicated information was based on a recent report from FAW publisher.

[17] Sec. 120.55(1)(a), F.S.

[18] Sec. 120.55(5), F.S.

[19] Sec. 120.55(1), F.S.

In 2001, the Legislature authorized the Department of Environmental Protection (DEP) and the State Technology Office (STO) to establish an Internet publication pilot project for the purpose of determining the cost-effectiveness of publishing administrative notices on the Internet, rather than in the FAW, and to submit a report containing findings regarding the cost-effectiveness of Internet publication.[20] The report indicated that DEP paid $44,179 for FAW line charges during calendar year 2001 and would have paid approximately $32,100 for FAW line charges during calendar year 2002 if Internet publication had not been permitted. Nonrecurring costs to establish Internet publication were $10,200 to develop the computer software application, and $20,000 to program the e-mail registration service enhancement. The report indicated that the computer software application may be shared with other agencies at no cost and recommended that the Legislature permit all agencies to elect Internet publication in lieu of publication in the paper version of the FAW, given the potential for substantial agency savings.[21]

2003 Interim Study on FAW Internet Noticing

During the 2003 Legislative Interim, JAPC studied the feasibility of Internet noticing for all state agencies and other entities that advertise in the FAW.[22] In October 2003, the results were published in the "Report on Internet Noticing of the Florida Administrative Weekly." The report recommended publication of the FAW on a centralized website managed by DOS. Further, it was recommended that DOS continue to collect the space rate charge to fund its functions related to publication of the FAW and FAC.

Effect of Bill

The bill requires DOS, effective December 31, 2007, to publish electronically the FAW on an Internet website managed by the department, which will serve as the official Internet website for such publication. The website is free to the public and must allow users to:

- Search for notices by type, publication date, rule number, word, subject, or agency.
- Search a database that makes available all notices published on the website for a period of at least five years.
- Subscribe to an automated e-mail notification of selected notices.
- View agency forms incorporated by reference in proposed rules.

The bill requires DOS to continue to publish the printed version of the FAW and to make copies available on an annual subscription basis.

The bill:

- Requires DOS to review agency notices for compliance with format and numbering requirements before publication on the FAW Internet website.
- Extends the DEP Internet Publication Pilot Project from its current termination date of July 1, 2006, to December 31, 2007, when Internet publication of the FAW is required to begin.
- Requires DOS to make training courses available to assist agencies in the transition to publication on the FAW Internet website.

The bill removes current requirements that the annual subscription price and the space rate be computed to cover only costs related to the FAW. Instead, the space rate that may be charged is to cover the costs related to the FAW and the FAC, and no exact basis for determining an annual subscription price for the printed FAW is specified. It also amends current law to provide that the trust fund must fund the costs incurred by DOS in carrying out the APA.

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[20] Ch. 2001-278, L.O.F.; s. 120.551, F.S.

[21] *Joint Report and Recommendations of the Department of Environmental Protection, The State Technology Office, and The Department of State on the Internet Publication Pilot Project under Sec. 120.551, F.S.*, Jan. 31, 2003.

[22] This study included conducting surveys and consulting with DOS, DEP, STO, and an independent technology expert to determine specific technology requirements and estimates of potential costs.

The bill provides that agency forms incorporated by reference into a rule noticed pursuant to s. 120.55(1)(a), F.S., after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated. It requires the FAW to contain: (1) the text of all proposed rules, rather than permitting a reference to that text in a prior edition of the FAW; and (2) a cumulative list of all rules that have been proposed, but not filed for adoption. The bill requires an agency, upon request, to provide copies of its rules with citations to, "the grant of rulemaking authority and the specific law implemented for each rule." It also requires DOS to maintain a permanent record of all notices published in the FAW.

The bill does not preclude publication of FAW materials on an agency's website or by other means.

C. SECTION DIRECTORY:

Section 1 amends s. 11.60, F.S., revising duties of the Joint Administrative Procedures Committee.

Section 2 amends s. 57.111, F.S., expanding the definition of "small business party."

Section 3 amends s. 120.54, F.S., relating to rulemaking and rule adoption procedures.

Section 4 amends s. 120.55, F.S., requiring Internet publication of the FAW.

Section 5 amends s. 120.551, F.S., postponing the repeal of the section.

Section 6 amends s. 120.56, F.S., revising provisions relating to withdrawal of challenged rules.

Section 7 amends s. 120.569, F.S., prescribing circumstances under which the time for filing a petition for hearing must be extended.

Section 8 amends s. 120.57, F.S., requiring the inclusion of additional information in final orders and modifying the required notice relating to protests of contract solicitations or awards.

Section 9 amends s. 120.65, F.S., requiring additional reports from DOAH and agencies regarding the administrative hearing process.

Section 10 amends s. 120.74, F.S., requiring the filing of agency reports with JAPC, in addition to the President and Speaker.

Section 11 requires DOS to provide certain assistance to agencies in their transition to publishing on the FAW Internet website.

Section 12 provides an effective date of July 1, 2006, unless otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   It has not been determined how much agencies will save after the second year that the FAW Internet website is operational.

2. Expenditures:

It is estimated that the FAW Internet website will require a non-recurring cost over three years of $450,000 for DOS to comply with the proposed implementation timeline.[23] Per DOS, the Records Management Trust Fund cash balance and anticipated revenue is sufficient to support this project.[24]

DOS indicates that it will continue to charge 99 cents per line to agencies using the FAW from now through the second year that the FAW Internet website is operational. DOS also states that these revenues will be used to fund all costs associated with the Law, Code, and Administrative Weekly section within the Division of Library and Information Services.[25]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

Per DOS, local governments advertising on the FAW Internet website will pay the current space rate charge of 99 cents per line until implementation of the new services is complete.[26]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, DOS publishes the FAW on its Internet website. The website is accessible by the public free of charge, but cannot be searched by topic. The bill provides for a free, fully searchable FAW Internet website, the ability for users to have selected notices e-mailed to users, and the ability for users to access forms incorporated by reference in rules. Accordingly, the bill will provide the public with greater access to the FAW and with advanced search capabilities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the Administration Commission for the purpose of prescribing the form and substantive provisions of a protest bond. The bond form currently exists in rule;[27] however, there has been an outstanding objection from the Joint Administrative Procedures Committee

[23] Telephone conversation with the Department of State, Administrative Code and Weekly Unit, February 10, 2006.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] Ch. 28-110.005, *Fla. Admin. Code.*

since its promulgation.[28] The rulemaking authority granted by the bill specifically addresses the JAPC objection.

The bill provides additional rulemaking authority regarding a specific class of respondents requesting an administrative hearing. The Administration Commission currently has rulemaking authority to promulgate uniform rules applicable to requests for administrative hearings under ss. 120.569 and 120.57, F.S. The additional authority granted in this bill specifies the pleading requirements for a respondent requesting an administrative hearing as part of an agency enforcement or disciplinary action.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Environmental Protection (DEP) has maintained a "pilot project" regarding online publication of FAW materials. Under current statutes, this pilot project[29] expires on July 1, 2006.[30] The Department of State has indicated that the new Florida Administrative Weekly and Florida Administrative Code Internet website is substantially complete. As a result, the extension of the DEP pilot project[31] no longer appears necessary.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably as amended.

In addition to the provisions provided in the bill, the amendment expands access to the Florida Equal Access to Justice Act by expanding the definition of "small business party" to include an individual whose net worth is less than $2M, when an agency claim is made against that individual's license, and the agency's action is deemed not "substantially justified."

The amendment also:

- Provides additional requirements for final orders issued after a DOAH hearing under s. 120.57(1), F.S.
- Requires DOAH and agencies to file certain reports with the Administration Commission and JAPC.
- Includes additional requirements (beyond those in the original bill) regarding the timing and substance of requests for administrative hearing.

In relation to agency rulemaking, the amendment clarifies that an agency must file a Notice of Change after a final rulemaking hearing, if non-technical changes are made, and requires publication of the notice in the FAW.

[28] See *Fla. Admin. Weekly*, Vol. 24, No. 20, May 15, 1998.
[29] S. 120.551(1), *et seq.*, F.S.
[30] *Id.* at paragraph (3).
[31] Section 5, amending s. 120.551(3), F.S.

A bill to be entitled

An act relating to administrative procedures; amending s. 11.60, F.S.; revising duties of the Administrative Procedures Committee with respect to its review of statutes; amending s. 57.111, F.S.; redefining the term "small business party" to include certain individuals whose net worth does not exceed a specified amount; amending s. 120.54, F.S.; requiring an agency to file a notice of rule change with the Administrative Procedures Committee; revising times for filing rules for adoption; providing an exception to the term "administrative determination" for purposes of rule adoption; providing for the form and provisions of bonds; providing an additional type of uniform rules of procedure to be adopted by the commission; providing requirements with respect to the contents thereof; providing an additional requirement with respect to specified uniform rules of procedure; amending s. 120.55, F.S.; requiring that certain information be included in forms incorporated by reference in rules; requiring the Florida Administrative Weekly to be published electronically on an Internet website; providing additional duties of the Department of State with respect to publication of notices; providing requirements for the Florida Administrative Weekly Internet website; providing that publication of specified material on the website does not preclude other publication; amending s. 120.551, F.S.; postponing the repeal of provisions relating to Internet publication of

specified notices; amending s. 120.56, F.S.; revising provisions relating to challenged proposed rules that are declared invalid; amending s. 120.569, F.S.; prescribing circumstances under which the time for filing a petition for hearing must be extended; amending s. 120.57, F.S.; requiring a final order to include an explicit ruling on each exception to the recommended order; requiring that additional information be included in notices relating to protests of contract solicitations or awards; amending s. 120.65, F.S.; requiring the Division of Administrative Hearings to include certain recommendations and information in its annual report to the Administrative Procedures Committee and the Administration Commission; amending s. 120.74, F.S.; requiring agency reports to be filed with the Administrative Procedures Committee; requiring that the annual report filed by an agency identify the types of cases or disputes in which it is involved which should be conducted under the summary hearing process; requiring the Department of State to provide certain assistance to agencies in their transition to publishing on the Florida Administrative Weekly Internet website; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 11.60, Florida Statutes, is amended to read:

11.60 Administrative Procedures Committee; creation;

membership; powers; duties.--

(4) The committee shall ~~undertake and~~ maintain a ~~systematic and~~ continuous review of statutes that authorize agencies to adopt rules and shall make recommendations to the appropriate standing committees of the Senate and the House of Representatives as to the advisability of considering changes to the delegated legislative authority to adopt rules in specific circumstances. The annual report submitted pursuant to paragraph (2)(f) shall include ~~a schedule for the required systematic review of existing statutes, a summary of the status of this review, and~~ any recommendations provided to the standing committees during the preceding year.

Section 2. Paragraph (d) of subsection (3) of section 57.111, Florida Statutes, is amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs.--

(3) As used in this section:

(d) The term "small business party" means:

1.a. A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the action is initiated by a state agency, not more than 25 full-time employees or a net worth of not more than $2 million, including both personal and business investments; ~~or~~

b. A partnership or corporation, including a professional practice, which has its principal office in this state and has at the time the action is initiated by a state agency not more

than 25 full-time employees or a net worth of not more than $2 million; or

c. An individual whose net worth did not exceed $2 million at the time the action is initiated by a state agency when the action is brought against that individual's license to engage in the practice or operation of a business, profession, or trade; or

2. Any ~~Either~~ small business party as defined in subparagraph 1., without regard to the number of its employees or its net worth, in any action under s. 72.011 or in any administrative proceeding under that section to contest the legality of any assessment of tax imposed for the sale or use of services as provided in chapter 212, or interest thereon, or penalty therefor.

Section 3. Paragraphs (d) and (e) of subsection (3) and paragraph (b) of subsection (5) of section 120.54, Florida Statutes, are amended to read:

120.54 Rulemaking.--

(3) ADOPTION PROCEDURES.--

(d) Modification or withdrawal of proposed rules.--

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the rule has not been changed from the rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days prior to filing the rule for adoption. Any change, other than a technical change that does not affect the substance of the rule, must be supported by the record of public hearings

held on the rule, must be in response to written material received on or before the date of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the ~~such~~ change, and provide the notice of change to persons requesting it, at least 21 days prior to filing the rule for adoption. The notice of change shall be published in the Florida Administrative Weekly at least 21 days prior to filing the rule for adoption. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

2. After the notice required by paragraph (a) and prior to adoption, the agency may withdraw the rule in whole or in part.

3. After adoption and before the effective date, a rule may be modified or withdrawn only in response to an objection by the committee or may be modified to extend the effective date by not more than 60 days when the committee has notified the agency that an objection to the rule is being considered.

4. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required

to be filed with the Department of State.

5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) Filing for final adoption; effective date.--

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, it shall file with the Department of State three certified copies of the rule it proposes to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after preparation of a statement of estimated regulatory costs required under s. 120.541, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. ~~Filings shall be made no less than 28 days nor more than 90 days after the notice required by paragraph (a).~~ When a required notice of change is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published

prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete. ~~The filing of a petition for an administrative determination under the provisions of s. 120.56(2) shall toll the 90-day period during which a rule must be filed for adoption until the administrative law judge has filed the final order with the clerk.~~

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The department shall reject any rule not filed within the prescribed time limits; that does not satisfy all statutory rulemaking requirements; upon which an

agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Weekly.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the rule, or on a date required by statute. Rules not required to be filed with the Department of State shall become effective when adopted by the agency head or on a later date specified by rule or statute. If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(5) UNIFORM RULES.--

(b) The uniform rules of procedure adopted by the

commission pursuant to this subsection shall include, but are not limited to:

1. Uniform rules for the scheduling of public meetings, hearings, and workshops.

2. Uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. The rules shall provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication. If a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means, the notice shall so state. The notice for public meetings, hearings, and workshops utilizing communications media technology shall state how persons interested in attending may do so and shall name locations, if any, where communications media technology facilities will be available. Nothing in this paragraph shall be construed to diminish the right to inspect public records under chapter 119. Limiting points of access to public meetings, hearings, and workshops subject to the provisions of s. 286.011 to places not normally open to the public shall be presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, shall apply to public meetings, hearings, and workshops conducted by means of

communications media technology, and shall be liberally construed in their application to such public meetings, hearings, and workshops. As used in this subparagraph, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

3. Uniform rules of procedure for the filing of notice of protests and formal written protests. The Administration Commission may prescribe the form and substantive provisions of a required bond.

4. Uniform rules of procedure for the filing of petitions for administrative hearings pursuant to s. 120.569 or s. 120.57. Such rules shall require the petition to include:

a. The identification of the petitioner.

b. A statement of when and how the petitioner received notice of the agency's action or proposed action.

c. An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action.

d. A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts.

e. A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action.

f. A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the

alleged facts relate to the specific rules or statutes.

g. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the agency to take with respect to the proposed action.

5. Uniform rules for the filing of a request for administrative hearing by a respondent in agency enforcement and disciplinary actions. Such rules shall require a request to include:

a. The name, address, and telephone number of the party making the request and the name, address, and telephone number of the party's counsel or qualified representative upon whom service of pleadings and other papers shall be made.

b. A statement that the respondent is requesting an administrative hearing and disputes the material facts alleged by the petitioner, in which case the respondent shall identify those material facts that are in dispute, or that the respondent is requesting an administrative hearing and does not dispute the material facts alleged by the petitioner.

c. A reference by file number to the administrative complaint that the party has received from the agency and the date on which the agency pleading was received.

The agency may provide an election-of-rights form for the respondent's use in requesting a hearing, so long as any form provided by the agency calls for the information in sub-subparagraphs a.-c. and does not impose any additional requirements on a respondent in order to request a hearing, unless such requirements are specifically authorized by law.

6.~~5.~~ Uniform rules of procedure for the filing and prompt disposition of petitions for declaratory statements. The rules shall also describe the contents of the notices that must be published in the Florida Administrative Weekly under s. 120.565, including any applicable time limit for the filing of petitions to intervene or petitions for administrative hearing by persons whose substantial interests may be affected.

7.~~6.~~ Provision of a method by which each agency head shall provide a description of the agency's organization and general course of its operations.

8.~~7.~~ Uniform rules establishing procedures for granting or denying petitions for variances and waivers pursuant to s. 120.542.

Section 4. Effective December 31, 2007, section 120.55, Florida Statutes, is amended to read:

120.55 Publication.--

(1) The Department of State shall:

(a)1. Through a continuous revision system, compile and publish the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the specific rulemaking authority pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(9), and complete indexes to all rules contained in the code. Supplementation shall be made as often as practicable, but at least monthly. The department may contract with a publishing firm for the publication, in a timely and useful form, of the Florida Administrative Code; however, the department shall retain responsibility for the code as provided

in this section. This publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created

by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

(b) Electronically publish on an Internet website managed by the department ~~publish~~ a weekly publication entitled the "Florida Administrative Weekly," which shall serve as the official Internet website for such publication and must contain:

1. Notice of adoption of, and an index to, all rules filed during the preceding week.

2. All notices required by s. 120.54(3)(a), showing the text of all rules proposed for consideration ~~or a reference to the location in the Florida Administrative Weekly where the text of the proposed rules is published~~.

3. All notices of public meetings, hearings, and workshops conducted in accordance with the provisions of s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

4. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

5. Notice of petitions for declaratory statements or administrative determinations.

6. A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week.

7. A cumulative list of all rules that have been proposed but not filed for adoption.

8.~~7.~~ Any other material required or authorized by law or deemed useful by the department.

The department shall publish a printed version of the Florida Administrative Weekly and make copies available on an annual subscription basis. The department may contract with a publishing firm for printed publication of the Florida Administrative Weekly.

(c) Review notices for compliance with format and numbering requirements before publishing them on the Florida Administrative Weekly Internet website.

(d)~~(c)~~ Prescribe by rule the style and form required for rules submitted for filing and establish the form for their certification.

(e)~~(d)~~ Correct grammatical, typographical, and like errors not affecting the construction or meaning of the rules, after having obtained the advice and consent of the appropriate agency, and insert history notes.

~~(e) Make copies of the Florida Administrative Weekly available on an annual subscription basis computed to cover a pro rata share of 50 percent of the costs related to the publication of the Florida Administrative Weekly.~~

(f) Charge each agency using the Florida Administrative Weekly a space rate ~~computed~~ to cover ~~a pro rata share of 50 percent of~~ the costs related to the Florida Administrative Weekly and the Florida Administrative Code.

(g) Maintain a permanent record of all notices published in the Florida Administrative Weekly.

(2) The Florida Administrative Weekly Internet website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of selected notices.

(d) View agency forms incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Weekly Internet website does not preclude publication of such material on an agency's website or by other means.

(4) ~~(2)~~ Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule ~~print or distribute copies of its rules, citing the specific rulemaking authority pursuant to which each rule was adopted~~.

(5) ~~(3)~~ Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Code or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the supervisor or person who approved the rule, and the date upon which the rule was approved.

(6) Access to the Florida Administrative Weekly Internet website and its contents, including the e-mail notification

service, shall be free for the public.

(7)(a) ~~(4)(a)~~ Each year the Department of State shall furnish the Florida Administrative Weekly, without charge and upon request, as follows:

1. One subscription to each federal and state court having jurisdiction over the residents of the state; the Legislative Library; each state university library; the State Library; each depository library designated pursuant to s. 257.05; and each standing committee of the Senate and House of Representatives and each state legislator.

2. Two subscriptions to each state department.

3. Three subscriptions to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House of Representatives.

4. Ten subscriptions to the committee.

(b) The Department of State shall furnish one copy of the Florida Administrative Weekly, at no cost, to each clerk of the circuit court and each state department, for posting for public inspection.

(8)(a) ~~(5)(a)~~ All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for ~~the publication and distribution of the Florida Administrative Code and the Florida Administrative Weekly and for associated~~ costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management

Trust Fund for fees collected pursuant to this chapter may ~~shall~~ not exceed $300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.

~~(c) It is the intent of the Legislature that the Florida Administrative Weekly be supported entirely from funds collected for subscriptions to and advertisements in the Florida Administrative Weekly.~~

Section 5. Subsection (3) of section 120.551, Florida Statutes, is amended to read:

120.551 Internet publication.--

(3) This section is repealed effective December 31, 2007 ~~July 1, 2006, unless reviewed and reenacted by the Legislature before that date~~.

Section 6. Paragraph (b) of subsection (2) of section 120.56, Florida Statutes, is amended to read:

120.56 Challenges to rules.--

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--

(b) The administrative law judge may declare the proposed rule wholly or partly invalid. Unless the decision of the administrative law judge is reversed on appeal, the proposed rule or provision of a proposed rule declared invalid shall ~~be withdrawn by the adopting agency and shall~~ not be adopted. ~~No rule shall be filed for adoption until 28 days after the notice required by s. 120.54(3)(a), until 21 days after the notice required by s. 120.54(3)(d), until 14 days after the public hearing, until 21 days after preparation of a statement of estimated regulatory costs required pursuant to s. 120.541, or until the administrative law judge has rendered a decision,~~

~~whichever applies.~~ However, the agency may proceed with all other steps in the rulemaking process, including the holding of a factfinding hearing. In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Weekly.

Section 7. Paragraph (c) of subsection (2) of section 120.569, Florida Statutes, is amended to read:

120.569 Decisions which affect substantial interests.--

(2)

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable. <u>The time for filing a petition shall be extended for</u>

an appropriate time if the petitioner demonstrates that the petitioner has been misled or guided into inaction by the agency or has in some extraordinary way been prevented from asserting his or her rights by the agency.

Section 8. Paragraphs (k) and (m) of subsection (1) and paragraph (a) of subsection (3) of section 120.57, Florida Statutes, are amended to read:

120.57 Additional procedures for particular cases.--

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--

(k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under ~~pursuant to~~ this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

(m) If a recommended order is submitted to an agency, the agency shall provide a copy of its final order and any exceptions to the division within 15 days after the order is filed with the agency clerk.

(3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO CONTRACT SOLICITATION OR AWARD.--Agencies subject to this chapter shall use the uniform rules of procedure, which provide procedures for the resolution of protests arising from the contract solicitation or award process. Such rules shall at least provide that:

(a) The agency shall provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. This notice shall contain the following statement: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

Section 9. Paragraphs (c) and (d) are added to subsection (10) of section 120.65, Florida Statutes, to read:

120.65 Administrative law judges.--

(10) Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedures Committee and the Administration Commission, including at least the following information:

(c) Recommendations as to those types of cases or disputes which should be conducted under the summary hearing process described in s. 120.574.

(d) A report regarding each agency's compliance with the filing requirement in s. 120.57(1)(m).

Section 10. Subsection (2) of section 120.74, Florida

Statutes, is amended to read:

120.74 Agency review, revision, and report.--

(2) Beginning October 1, 1997, and by October 1 of every other year thereafter, the head of each agency shall file a report with the President of the Senate, ~~and~~ the Speaker of the House of Representatives, and the committee, with a copy to each appropriate standing committee of the Legislature, which certifies that the agency has complied with the requirements of this subsection. The report must specify any changes made to its rules as a result of the review and, when appropriate, recommend statutory changes that will promote efficiency, reduce paperwork, or decrease costs to government and the private sector. The report must identify the types of cases or disputes in which the agency is involved which should be conducted under the summary hearing process described in s. 120.574.

Section 11. The Department of State shall, before December 31, 2007, make available, to all agencies required on the effective date of this act to publish materials in the Florida Administrative Weekly, training courses for the purpose of assisting the agencies with their transition to publishing on the Florida Administrative Weekly Internet website. The training courses may be provided in the form of workshops or software packages that allow self-training by agency personnel.

Section 12. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 7093 PCB TR 06-01 General Revenue Bonds for Transportation/Resolution & Referendum
SPONSOR(S): Transportation Committee
TIED BILLS: HB 7095 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation Committee	11 Y, 0 N	Pugh	Miller
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) State Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Florida Department of Transportation (FDOT) relies on a variety of state and federal revenue sources to finance its $36 billion Five-Year Work Program. About two percent of the agency's funding is derived from general-obligation bonds, specifically for right-of-way acquisition and construction of bridges.

HJR 7093 is a proposed joint resolution seeking voter approval of general obligation bonds to finance right-of-way acquisition and bridge repair and replacement. The outstanding amount of general obligation bonds issued for these transportation purposes cannot exceed 25 percent of the state's total tax revenues of the previous two years, pursuant to the proposed section 11(g), Article VII to the state constitution. General obligation bonds (also called "state bonds") pledge the full faith and credit of the State of Florida.

This proposal is being offered as a constitutional amendment because general obligation bonds must be approved by voters, pursuant to Article VII of the state constitution and to s. 215.59, F.S.

HJR 7093 must be approved by a three-fifths vote of the House and the Senate before it can be placed on the next statewide ballot in November 2006.

By itself, the amendment has a minimal fiscal impact because the bonds must be issued "in the manner provided by general law," meaning the Legislature must pass implementing legislation before any bonds can be sold. The state will incur an estimated $40,000 for publication costs.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 4, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: If the proposed constitutional amendment and implementing legislation become law, FDOT potentially will have access to hundreds of millions of dollars to build more transportation infrastructure. As such, this legislation can be viewed as facilitating growth in government. Viewed from a larger context, the legislation promotes greater government spending on much-needed public infrastructure.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Bonds, generally

The most common types of bonds issued by governmental entities are general obligation bonds and revenue bonds. General obligation bonds, also called "state bonds" even though local governmental entities also can issue them, pledge the full faith and credit of the issuing governmental entity. The debt service on these bonds typically is paid with identified revenues within the state or local government's treasury. Schools, highways, and environmental preserves are typical types of public infrastructure purchased with general obligation bonds. On the other hand, the debt service on revenue bonds is paid with revenues generated by the infrastructure built using the bond proceeds. Typical infrastructure projects built with revenue bonds are toll highways and wastewater treatment facilities.

Florida's constitution and statutes include several examples of both types of bond programs. Under Florida law, general obligation bonds must be approved by voters before they can be issued. Revenue bonds do not have that requirement, although there may be instances where local governments have asked their voters whether they support the issuance.

Pursuant to s. 215.59, F.S.:

> *"(1) The issuance of state bonds pledging the full faith and credit of the state, pursuant to s. 11, Art. VII of the State Constitution, is hereby authorized upon approval by vote of the electors, except as otherwise authorized by said s. 11, Art. VII. The amount of such state bonds, other than refunding bonds, the projects to be financed thereby, and the date of such vote of the electors shall be as provided by law.*
>
> *(2) The issuance of revenue bonds payable solely from funds derived directly from sources other than state tax revenues, pursuant to s. 11(d), Art. VII of the State Constitution, is hereby authorized without a vote of the electors in the manner provided by law.*
>
> *(3) All bonds hereby authorized shall be issued in the manner provided by the Constitution or by the division in the manner provided by this act, subject to all other applicable provisions of law."*

Bonds issued by most state governmental entities in Florida must follow the requirements of the State Bond Act, ss. 215.57-215.83, F.S. Even those entities that can issue their own bonds, without assistance of the state Division of Bond Finance (the Division), generally follow the State Bond Act's guidelines and procedures.

According to the Division's *2005 Debt Affordability Study*, [1] state tax-supported debt totaled $17.5 billion and the debt from revenue bonds and other self-supporting debt (for which the state is not legally responsible) totaled $5 billion.

[1] Report is available at http://www.sbafla.com/bond/pdf/publications/DARrpt05.pdf

Pursuant to s. 215.98, F.S., the Legislature has expressed as state policy "prudence in undertaking the authorization and issuance of debt." It has established a debt target and a debt cap as thresholds to guide issuance of state debt. The debt target is defined as a ratio of debt service to revenue available to pay debt service on tax-supported debt, not to exceed 6 percent. The debt cap is established as a 7-percent ratio. As of June 30, 2005, the state's debt ratio was calculated to be 5.36 percent.

Over the next 10 years, based on projected state revenue growth and the payoff of some bonds, the state's bonding capacity will be $23.6 billion from 2006-2015. Existing bond-financed programs will consume approximately $9.6 billion of that, leaving approximately $16.7 billion in bond capacity available over the next 10 years. That capacity is spread unevenly over the10-year period; for the first four years of the decade, only about $1.6 billion is available for new bond programs within the six-percent target and about $6.4 billion is available within the seven-percent cap, according to the Division's 2005 study.

Section 215.98, F.S., also requires that if the six-percent target debt ratio will be exceeded by a proposed bond issuance, the authorization of this debt must be accompanied by a legislative statement of determination that such authorization and issuance is in the state's best interests. The Legislature is prohibited from authorizing the issuance of additional state tax-supported debt that would cause the debt ratio to exceed the seven-percent cap unless the Legislature determines that such additional debt is necessary to address a critical state emergency, which is not defined.

State transportation bonds

FDOT manages one of the state's largest and unique budgets. The Legislature approves an annual operating and capital outlay budget, and a Five-Year Work Program that, for all practical purposes, locks in the agency's primary expenditures over the next five years. For FY 05-06, FDOT's budget was $8.1 billion, about $7 billion of which is the first year of the Work Program's expenditures. Additionally, the Legislature adopted the agency's $34.9 billion 2006-2010 Work Program.

Although bond-financing programs are about six percent of FDOT's overall budget, they play important roles in the agency's ability to meet transportation needs. The agency has three programs financed with revenue bonds: the Florida Turnpike Enterprise, the State Infrastructure Bank program, and individual bonds supporting transportation and environmental improvements at several non-Turnpike toll facilities operated by FDOT. The agency also contributes $25 million annually to pay debt service on $324 million in bonds issued by the Florida Ports Financing Commission.

FDOT has only one general obligation bond program. In 1988, Florida voters approved a constitutional amendment creating section 17, Article VII of the state constitution, authorizing the issuance of general obligation bonds to acquire right-of-way for roads and to construct bridges. The Legislature approved the use of these bonds for the advance acquisition of right-of-way land beginning in 1991 and bridge construction beginning in 1994. The Legislature also provided that the bonds' debt service was to be paid from the state fuel-tax revenues. About three-fourths of the funds from these bonds are being spent on right-of-way acquisition and one-fourth on bridge construction.

Current law provides that a maximum of seven percent of state transportation tax collections, not to exceed $275 million, may be used to pay the annual debt service on these general obligation bonds.

As of December 2005, a total of $1.86 billion in right-of-way bonds have been issued. Examples of major projects whose right-of-way has been purchased using these bond funds include: $66.3 million for phase I of the Miami Intermodal Center; a $26.4 million bond fund grant to the Orlando-Orange County Expressway Authority to help purchase right-of-way for the Western Beltway Part A project; $8.5 million in bond funds for the Brannon Field Chaffee project in Duval County; $34.2 million in bond funds for the Seminole Expressway; and $15.9 million for the Polk Parkway project.

During the 20-year period from fiscal years 1990-91 through 2009-10, FDOT estimates that it will have leveraged $2.7 billion in right-of-way bond proceeds to finance approximately $18.1 billion in land acquisition.

Since 1995, approximately $800 million in these bond proceeds have been committed to the replacement of bridges on the State Highway System, according to FDOT staff. With other funding sources considered, this $800 million has been used to leverage $1.6 billion in total project costs. Some of the major bridge projects financed with these bond funds are: the Fuller Warren Bridge in Jacksonville; the Interstate-10 bridge over Blackwater Creek in Northwest Florida; and the Flagler Memorial Bridge.

Transportation infrastructure needs

Several studies in recent years by public and private institutions have concluded that Florida's transportation infrastructure is not keeping pace with its growth in population and number of visitors. These studies have concluded that Florida has unfunded state transportation needs ranging from $38 billion to $48 billion; this does not include projected transportation needs by cities and counties.

Exacerbating the backlog is the unprecedented growth in the costs associated with transportation construction, due in large part to increased international and regional demand. Recent reports by FDOT indicate that asphalt prices have increased nearly 22 percent per ton; concrete prices have increased nearly 33 percent per cubic yard; and steel prices have increased from six percent to nearly 19 percent per pound, depending on the type of steel. Right-of-way costs in Florida also are increasing, by as much as 10 percent annually in some areas, FDOT has reported.

Constitutional amendments

Article XI, sections 1 and 5, of the Florida Constitution provide for amendment to the Constitution by the legislative process. The Legislature proposes amendments to the Constitution by joint resolution passed by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's Office, unless a special election has been scheduled for the express purpose of having the electorate vote on the proposed amendment.

Effect of Proposed Changes

HJR 7093 would add a subsection (g) to the existing section 11, Article VII of the state Constitution, authorizing issuance of new general obligation bonds for right-of-way acquisition and bridge repair and replacement. The bonds' debt service would be paid with state revenues, and would pledge the full faith and credit of the state.

The bonds' outstanding principle could never exceed 25 percent of the total state tax revenues of the previous two fiscal years. According to the Fall 2005 Florida Revenue Estimating Conference, Florida's total tax receipts in FY 05-06 and FY 06-07 total about $40 billion each year. As a rough estimate, the total amount of bonds that could be issued if this amendment passed is about $20 billion. However, the total amount issued would ultimately be decided by the Legislature, when appropriating the debt service.

The bonds also would be issued "in the manner provided by general law," meaning that the issuance would be governed by the State Bond Act procedures and requirements and any implementing legislation the Legislature additionally approved.

The draft joint resolution also includes a ballot summary that is similar to the wording of the proposed subsection.

C. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Minimal. Article XI, Section 5, of the Florida Constitution requires that each proposed amendment to the constitution be published in a newspaper of general circulation in each county two times prior to the election where it will be considered. The state Division of Elections estimated that the cost of placing these advertisements is about $40,000 per amendment.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

No bonds will be issued until implementing statutory language becomes law.

Volume 21 (Fall 2005) of the Florida Revenue Estimating Conference's Revenue Analysis includes a chart on page 35 estimates that the total state taxation in FY 05-06 will be $39.9 billion, and in FY 06-07 will be $40.236 billion. These figures include revenues from state taxes, fees, licenses, and charges. Twenty-five percent of the total taxation for those two fiscal years is about $20 billion.

Additionally, the Division of Bond Finance has evaluated HB 7093's implementing legislation, HB 7095, on the state's debt position. Division staff has projected that the implementing legislation's $500 million maximum debt service would cause the state's benchmark debt ratio to exceed the 7-percent cap. The projection assumes that the transportation bond program would be fully leveraged in the three years following passage, and that the proposed bond financing of class-size reduction required by the State Constitution also would be fully leveraged.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The provisions of Article VII, Section 18, requiring a mandate analysis of proposed legislation do not apply to proposed amendments to the state Constitution.

2. Other:

Article XI, sections 1 and 5, Florida Constitution, provides that a constitutional amendment may be proposed by joint resolution of the Legislature. Final passage in the House and Senate requires a three-fifths vote in each house; passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, Article XI, section 5, of the Florida Constitution provides that the proposed amendment would be placed before the electorate at the 2006 General Election or at an earlier special election authorized for that purpose.

Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in the county in which a newspaper is published. If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the state constitution on the first Tuesday after the first Monday in January following the election.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

House Joint Resolution

A joint resolution proposing an amendment to Section 11 of Article VII of the State Constitution to authorize issuance in the manner provided by general law of general obligation bonds for state capital projects for transportation facility improvements.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 11 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 11. State bonds; revenue bonds.--

(a) State bonds pledging the full faith and credit of the state may be issued only to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, upon approval by a vote of the electors; provided state bonds issued pursuant to this subsection may be refunded without a vote of the electors at a lower net average interest cost rate. The total outstanding principal of state bonds issued pursuant to this subsection shall never exceed fifty percent of the total tax revenues of the state for the two preceding fiscal years, excluding any tax

revenues held in trust under the provisions of this constitution.

(b) Moneys sufficient to pay debt service on state bonds as the same becomes due shall be appropriated by law.

(c) Any state bonds pledging the full faith and credit of the state issued under this section or any other section of this constitution may be combined for the purposes of sale.

(d) Revenue bonds may be issued by the state or its agencies without a vote of the electors to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, and shall be payable solely from funds derived directly from sources other than state tax revenues.

(e) Bonds pledging all or part of a dedicated state tax revenue may be issued by the state in the manner provided by general law to finance or refinance the acquisition and improvement of land, water areas, and related property interests and resources for the purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation.

(f) Each project, building, or facility to be financed or refinanced with revenue bonds issued under this section shall first be approved by the Legislature by an act relating to appropriations or by general law.

(g) Bonds pledging the full faith and credit of the state may be issued by the state in the manner provided by general law to finance or refinance right-of-way and other real property acquisitions for highway, rail, public transportation, airport,

and seaport projects and to finance or refinance bridge repair and replacement projects. Bonds issued under this subsection shall be secured by a pledge of and shall be payable primarily from state tax revenues as provided by general law. The total outstanding principal of state bonds issued pursuant to this subsection shall not exceed twenty-five percent of the total tax revenues of the state for the two preceding fiscal years.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 11

STATE BONDS FOR TRANSPORTATION FUNDING.--Proposing an amendment to the State Constitution to authorize the Legislature to provide for the issuance of general obligation bonds by the State of Florida to finance or refinance right-of-way and other real property acquisitions for transportation improvements to highways, rail facilities, public transportation, airports, and seaports and to finance or refinance bridge repair and replacement projects; and to provide that the amount of these bonds, which pledge the full faith and credit of the state, shall not exceed 25 percent of the state's total tax revenues in the two preceding fiscal years.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7095 PCB TR 06-02 General Revenue Bonds for Transportation/Program Implementation
SPONSOR(S): Transportation Committee
TIED BILLS: HJR 7093 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation Committee	11 Y, 0 N	Pugh	Miller
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) State Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Florida Department of Transportation (FDOT) is responsible for managing a $36 billion, Five-Year Work Program of highway, turnpike, aviation, seaport, and public transit projects, financed with state, federal and, in certain instances, advanced local funds. About two percent of the agency's funding is derived from general-obligation bonds, specifically for right-of-way acquisition and construction of bridges.

Although FDOT has a well-planned work program, and last year received additional funding over the next decade for transportation infrastructure crucial to implementing new growth management and concurrency requirements, a backlog of between $38 billion and $48 billion remains.

HB 7095 creates a bond-financing program for transportation right-of-way acquisition and bridge replacement and repair. The general obligation bonds financing the program pledge the full faith and credit of the state, and their debt service will be paid with state revenues transferred from the General Revenue Fund to the State Transportation Trust Fund. The bonds will be issued by the state Division of Bond Finance (DBF), pursuant to the State Bond Act.

The bill does not specify the amount of bonds to be issued; rather, it limits the total debt service to be appropriated in any one year at $500 million. The term of the bonds also is flexible, ranging up to 30 years. Based on that range and current interest rates, the amount of bonds that could be issued based on the $500 million debt service cap is between $3.7 billion and $6.7 billion.

The bonds may be issued only upon passage of a constitutional amendment creating the program. Under Florida law, the issuance of general obligation bonds must first be approved by the voters. HB 7095 is the implementing legislation for the proposed joint resolution HJR 7093 that seeks to amend the state constitution to add this new bond program.

HB 7095 takes effect upon becoming law. However, the section implementing the bond program becomes effective only if the electorate approves the constitutional amendment providing for the issuance of the general obligation bonds.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: If the proposed constitutional amendment and implementing legislation pass, FDOT potentially will have access to hundreds of millions of dollars to build more transportation infrastructure. As such, this legislation can be viewed as facilitating growth in government. Viewed from a larger context, the legislation promotes greater government spending on much-needed public infrastructure.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Transportation funding in the state of Florida

For FY 05-06, FDOT's budget is $8.1 billion, about $7 billion of which is the first year of the Work Program's expenditures. Additionally, the Legislature adopted the agency's $34.9 billion 2006-2010 Work Program.

The sources of FDOT's current Work Program funding are: 47 percent fuel tax revenues and other traditional transportation revenue sources; 24 percent federal funds; 20 percent toll revenues and bond proceeds; eight percent documentary stamp tax revenues; and one percent General Revenue.

State transportation bonds

Although bond-financing programs are about six percent of FDOT's overall budget, they play important roles in the agency's ability to meet transportation needs. The agency has three programs financed with revenue bonds: the Florida Turnpike Enterprise, the State Infrastructure Bank program, and individual bonds supporting transportation and environmental improvements at several non-Turnpike toll facilities operated by FDOT. The agency also contributes $25 million annually to pay debt service on $324 million in bonds issued by the Florida Ports Financing Commission.

FDOT has only one general obligation bond program that comprises about two percent of its total budget. In 1988, Florida voters approved a constitutional amendment creating section 17, Article VII of the state constitution, authorizing the issuance of general obligation bonds to acquire right-of-way for roads and to construct bridges. The Legislature approved the use of these bonds for the advance acquisition of right-of-way land beginning in 1991 and bridge construction beginning in 1994. The Legislature also provided that the bonds' debt service was to be paid from state fuel tax revenues. About three-fourths of the funds from these bonds are being spent on right of way acquisition and one-fourth is being spent on bridge construction.

Current law provides that a maximum of seven percent of state transportation tax collections, not to exceed $275 million, may be used to pay the annual debt service on these general obligation bonds.

As of December 2005, a total of $1.86 billion in right-of-way bonds have been issued. Examples of major projects whose right-of-way has been purchased using these bond funds include: $66.3 million for phase I of the Miami Intermodal Center; a $26.4 million bond fund grant to the Orlando-Orange County Expressway Authority to help purchase right-of-way for the Western Beltway Part A project; $8.5 million in bond funds for the Brannon Field Chaffee project in Duval County; $34.2 million in bond funds for the Seminole Expressway; and $15.9 million for the Polk Parkway project.

During the 20-year period from fiscal years 1990-91 through 2009-10, FDOT estimates that it will have leveraged $2.7 billion in right-of-way bond proceeds to finance approximately $18.1 billion in land acquisition.

Since 1995, approximately $800 million in Right of Way Acquisition and Bridge Construction Bonds have been committed to the replacement of bridges on the State Highway System, according to FDOT staff. With other funding sources considered, this $800 million has been used to leverage $1.6 billion in total project costs. Some of the major bridge projects financed with these bond funds are: the Fuller Warren Bridge; the Interstate-10 bridge over Blackwater Creek; and the Flagler Memorial Bridge.

Backlog of unmet transportation needs

Several studies in recent years by public and private institutions have concluded that Florida's transportation infrastructure is not keeping pace with its growth in population and number of visitors. These studies have concluded that Florida has unfunded state transportation needs ranging from $38 billion to $48 billion; this does not include projected transportation needs by cities and counties.

FDOT's recent selection of projects for the new growth-management funds made available in the 2005 session also illustrates how transportation needs are outstripping available funding. The 2005 session laid the groundwork for FDOT to receive nearly $6 billion in general revenues to finance a variety of transportation infrastructure programs and is designed to help the state and local governments meet new concurrency requirements. Last year, 273 projects requests totaling $4.6 billion for the growth management funds earmarked for the Strategic Intermodal System were submitted to FDOT's Central Office. FDOT selected 141 projects, totaling $2.2 billion.

Exacerbating the backlog is the unprecedented growth in the costs associated with transportation construction, due in large part to increased international and regional demand. Recent reports by FDOT indicate that asphalt prices have increased nearly 22 percent per ton; concrete prices have increased nearly 33 percent per cubic yard; and steel prices have increased from six percent to nearly 19 percent per pound, depending on the type of steel. Right-of-way costs in Florida also are increasing, by as much as 10 percent annually in some areas, FDOT has reported.

Effect of Proposed Changes

HB 7095 creates a bond-financing program for transportation right-of-way and real property acquisition, and for bridge replacement and repair. The land acquisition would be for highway, rail, public transportation, airport, and seaport uses.

The general obligation bonds financing the program pledge the full faith and credit of the state, and their debt service will be paid with state tax revenues transferred from the General Revenue Fund to the State Transportation Trust Fund. The bonds will be issued by DBF, pursuant to the State Bond Act.

The draft bill does not specify the amount of bonds to be issued; rather, it limits the total debt service to be appropriated in any one year at $500 million. The term of the bonds also is flexible, ranging up to 30 years. Based on that range and current interest rates, the amount of bonds that could be issued based on the $500 million debt service cap is between $3.7 billion and $6.7 billion.

The bonds may be issued only upon passage of a constitutional amendment creating the program. Under Florida law, the issuance of general obligation bonds must first be approved by the voters. HB 7095 is the implementing legislation for HJR 7093, seeking to create the bond program in the constitution.

HB 7095 takes effect upon becoming law; however, the section implementing the bond program becomes effective only if the electorate approves the constitutional amendment providing for the issuance of the general obligation bonds.

C. SECTION DIRECTORY:

Section 1: Creates s. 215.606, F.S., which addresses a new general-obligation bond program to fund certain types of transportation infrastructure. The section: expresses legislative findings; lists eligible project categories; sets debt-service cap for bonds; sets terms of bonds; and explains the Division of Bond Finance's role.

Section 2: Specifies that this act takes effect on the effective date of the Constitutional Amendment, if the amendment is approved by the electors in November 2006. If the amendment is rejected by the voters, this bill will be null and void.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None, unless the constitutional amendment creating the new general obligation bonds for this program is adopted by the state voters and the Legislature appropriates debt-service. See "II.D. FISCAL COMMENTS" below.

2. Expenditures:

   None, unless the constitutional amendment creating the new general obligation bonds for this program is adopted by the state voters and the Legislature appropriates debt service. See "II.D. FISCAL COMMENTS" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None, unless the constitutional amendment creating the new general obligation bonds for this program is adopted by the state voters and the Legislature appropriates debt service. Under those circumstances, transportation contractors and supporting industries would likely benefit from the opportunity of bidding for additional FDOT projects.

Indirectly, the state's economy, local governments, and citizens would benefit from the infusion of transportation funding and the resulting infrastructure. An FDOT economic study indicates that for every $1 spent on transportation infrastructure results in a $5.50 economic benefit.

D. FISCAL COMMENTS:

DBF and FDOT prepared a variety of bonding scenarios for committee staff using a range of debt service caps, terms of maturity for the bonds, and interest rates.[1] At the high end, a $500 million annual limit on debt service on 30-year bonds at six-percent interest would generate an estimated $6.7 billion in bond proceeds. FDOT could commit those funds to build nearly $8 billion worth of projects. The debt service would be $14.9 billion. In whatever scenario is selected, the source of the debt service would be recurring state general revenue. Pledging general revenue as debt service on transportation bonds will result in these pledged funds not being available to the Legislature to appropriate for other state programs or needs while the bonds are outstanding.

[1] Documents on file with the House Transportation Committee.

Also, FDOT staff has said that a trust fund should be created for the new bonding program. If the constitutional amendment creating the program is approved by voters in November 2006, no bonds will be sold until the Legislature appropriates the debt service, which at the earliest will be May 2007, during the regular session. At that time, a trust fund could be created, if necessary.

Additionally, DBF staff has evaluated HB 7095's potential impact on the state's debt position by calculating the impact on the state's benchmark debt ratio, and have projected that the $500 million maximum debt service would cause the state's benchmark debt ratio to exceed the seven-percent cap. This projection assumes that this proposed bonding program would be fully leveraged in the three years following passage, and also assumes the proposed bond financing of the class-size reduction required by the State Constitution would be fully leveraged.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   HB 7095 does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

FDOT and DBF have sufficient existing rulemaking authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to transportation financing; creating s. 215.606, F.S.; providing legislative findings; authorizing issuance of state bonds to finance or refinance the costs of acquiring real property or the rights to real property for state transportation infrastructure or to finance or refinance repair and replacement of bridges; requiring legislative authorization; providing that the bonds are secured by the full faith and credit of the state; providing for transfer of funds for debt service; providing for issuance of the bonds by the Division of Bond Finance under the State Bond Act; providing for certification of the projects by the Department of Transportation; limiting the amount of the bonds issued and debt service requirements; providing for the terms of the bonds to be set by the division in consultation with the department based on certain factors; providing for use of the bond proceeds; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 215.606, Florida Statutes, is created to read:

215.606 State bonds for financing transportation infrastructure.--

(1) The Legislature finds that Florida's transportation infrastructure is not keeping pace with the state's growth in

population and visitors or with increased material and labor costs. More than 65 percent of the state's major highways are considered congested, and motorists are spending more hours driving and are driving more miles per day than the state's capacity to add new lane miles. The Legislature also finds that recent increases in transportation funding will not significantly reduce the $38 billion to $48 billion backlog in unfunded state transportation needs. Exacerbating the problem are double-digit increases in the materials used in transportation construction and increased competition, nationwide, for transportation builders. Finally, the Legislature finds that a safe and efficient transportation system is one of the state's key economic engines. Therefore, the Legislature concludes that an additional, flexible funding source for certain transportation activities and projects is necessary to continue the state's commitment to preserve, maintain, and expand its transportation system in order to keep residents and visitors mobile, effectively move freight and consumer goods, and enhance the state's economy.

(2) The issuance of state bonds to finance or refinance the costs of acquiring real property or the rights to real property for state transportation infrastructure or to finance or refinance repair and replacement of bridges, and purposes incidental to such property acquisition or bridge projects, is hereby authorized pursuant to s. 11(g), Art. VII of the State Constitution and ss. 215.57-215.83.

(a) Right-of-way acquisition or transportation infrastructure financed by state bonds issued under this section

shall first be authorized by the Legislature by an act relating to appropriations or by general law and shall be issued pursuant to the State Bond Act.

(b) Bonds issued pursuant to this section shall be secured by the full faith and credit of the state. An amount sufficient to pay debt service on the bonds shall be transferred from the General Revenue Fund to the State Transportation Trust Fund.

(c) The Department of Transportation shall request the Division of Bond Finance to issue the state bonds authorized by this section pursuant to the State Bond Act. The Department of Transportation shall certify that the projects to be financed will comply with the requirements of s. 339.135(4)(b) and (c) and (5).

(d) The total amount of bonds to be issued under this section shall be limited by the debt service requirements of the bonds issued and outstanding. The debt service requirements of the bonds issued and outstanding under this section shall not exceed $500 million in any fiscal year.

(e) The term of the bonds shall not exceed 30 years. The Division of Bond Finance, in consultation with the Department of Transportation, shall determine the term of each bond series, and the timing of each issuance, based on factors including interest rates, market conditions, and sufficiency of debt service.

(3) Bond proceeds available pursuant to this section shall be transferred to the State Transportation Trust Fund and may be used to finance the following Department of Transportation infrastructure activities or projects:

(a) Acquisition of right-of-way and other real property for highway, rail, public transportation, airport, and seaport projects; or

(b) Bridge Repair and Replacement Program projects.

Section 2. This act shall take effect on the effective date of the amendment to the State Constitution proposed by House Joint Resolution 7093 or a similar joint resolution having substantially the same specific intent and purpose, if that amendment is approved by the electors at the general election to be held in November 2006. If the amendment to the State Constitution proposed by such joint resolution is rejected by the voters, this act shall be null and void.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7107 PCB EDTB 06-04 Registration & Protection of Trademarks Act
SPONSOR(S): Economic Development, Trade & Banking Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	12 Y, 0 N	Carlson	Carlson
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) Commerce Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Florida's trademark law[1] was enacted in 1967.[2] The law is based on the International Trademark Association's ("INTA") 1964 Model State Trademark Bill ("MSTB"), as amended and updated.

This bill is based upon the MSTB with input from the Intellectual Property Committee of the Business Law Section of the Florida Bar and the Department of State, Division of Corporations. The bill modernizes and harmonizes Florida's trademark law consistent with federal law and the revised MSTB where appropriate.

In particular, the bill:

- Provides a popular name;
- Clarifies definitions consistent with federal law;
- Creates an application review process and provides a right to administrative hearing for affected parties;
- Reduces the duration of a registered mark from 10 to 5 years;
- Allows a person to file a change of name with the Department of State and clarifies that security interests in a mark may be created and perfected under the Uniform Commercial Code;
- Conforms the Florida classification system for goods and services to the International Trademark Classification System;
- Authorizes an award of attorney's fees to a prevailing party according to the circumstances of a case;
- Revises provisions allowing the owner of a famous mark to prevent the dilution of the mark by enjoining the use of the mark by another person or seek additional remedies in the case of willful use of the mark by another person; and
- Locates all fees applicable to trademark registrations and related activities in one section of law.

The bill appears not to have a fiscal impact. See Part II, Fiscal Analysis and Economic Impact Statement.

The bill has an effective date of January 1, 2007.

[1] ss. 495.011-495.181, F.S.
[2] s. 1, ch. 67-58, L.O.F.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

Florida's trademark law[3] was enacted in 1967.[4] The law is based on the International Trademark Association's ("INTA") 1964 Model State Trademark Bill ("MSTB"). The law was last amended substantively in 1990, when the Legislature added a name reservation provision to the law.[5]

In September 1992, INTA's Board of Directors approved a proposal revising the 1964 MSTB to reflect what the organization felt were the "current needs of intrastate and regional commerce while harmonizing state trademark practices with recent changes in federal trademark law." INTA subsequently amended the dilution provision of the MSTB to make it consistent with the Federal Trademark Dilution Act of 1996. INTA reports that the MSTB has been adopted in 26 states.

In early 2005, Senator Campbell and Representative Galvano introduced SB 678 and HB 845, which incorporated the MSTB in most respects. On March 9, 2005, a subcommittee of the Florida Bar Business Law Section, Intellectual Property Law Committee provided Senator Campbell and Representative Galvano with a Technical Input Memorandum, highlighting many issues that the committee felt warranted attention before adopting the bills as law. This bill is based on federal law, the revised MSTB, the comments contained in the Technical Input Memorandum and input from the Department of State, Division of Corporations.

Effect of Proposed Changes

Popular Name The bill titles chapter 495 as the "Registration and Protection of Trademarks Act."

Definitions The bill revises many of the definitions in the present statute to conform to the definitions contained in the Federal Trademark Act (the "Lanham Act").[6] In contrast to the MSTB, which does not provide for the protection of collective and certification marks, the proposed bill retains the definitions for such marks. The bill also follows the federal standard for determining abandonment, namely nonuse for three consecutive years as opposed to two years, as provided for in the MSTB. The bill creates or substantially revises the following terms:

- The bill defines "abandoned" as applying to a mark when its use has been discontinued with intent not to resume such use and when any course of conduct of the owner cause the mark to lose its significance as a mark. The bill provides that intent may be inferred from circumstances. It also provides that nonuse for three consecutive years is prima facie evidence of abandonment.

[3] ss. 495.011-495.181, F.S.
[4] s. 1, ch. 67-58, L.O.F.
[5] s. 3, ch. 90-220, L.O.F.
[6] 15 U.S.C. ss. 1051 et seq.

- The bill defines "department" to mean the Department of State.
- The bill defines "dilution" to mean the lessening of the capacity of a mark to identify and distinguish goods or services, regardless of the presence or the absence of: (a) competition between the owner of the mark and other parties and (b) likelihood of confusion, mistake or deception.
- The bill defines the term "mark" to mean any trademark, service mark, certification mark, or collective mark entitled to registration under ch. 495, whether or not registered.
- The bill clarifies that the term "person" to include a juristic person, such as a firm, partnership, corporation, union, association, or other entity capable of suing and being sued in a court of law, as well as a natural person.
- The bill defines the term "service mark" to mean any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of such person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. It provides that titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that the person or the programs may advertise the goods of the sponsor.
- The bill defines the term "trade name" to mean any name used by a person to identify a business or vocation of such person.
- The bill defines the term "trademark" to mean any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown.

Registrability The bill revises the registrability provisions of the statute to be more consistent with the Lanham Act. It includes among the marks that may not be registered those that consist of or comprises a name, signature or portrait identifying a particular living individual, except by his or her written consent, and includes the name, signature or portrait of a deceased President of the United States during the lifetime of his widow or her widower, if any, except by the written consent of the widow or widower. It clarifies that the exclusion from registration for marks used on or in connection with the goods of the applicant applies when the mark is merely descriptive or deceptively misdescriptive; primarily geographically descriptive or misdescriptive; or comprises a matter that is functional. It also excludes marks that are primarily geographically misdescriptive of goods or that are functional from the exemption from the exclusion from registration for marks that have become distinctive of goods or services.

Reservation The bill deletes the name reservation provision contained in the current statute. This provision was an attempt to provide protection similar to the protection afforded under the federal intent-to-use law, except that the state provision did not offer substantive rights. As a result, certain practitioners feel that the provision may create more of a burden than a benefit, and accordingly the act repeals it.

Application for Registration The bill clarifies that an application for registration of a mark must be filed with the department in a manner and form complying with the requirements of the department. It also clarifies that if the applicant is a business entity, it must identify the place of incorporation or organization. It requires that the applicant state that it is the owner of the mark, that the mark is in use, and that to the best of the applicant's knowledge, no other person except a related company has registered the mark in Florida that has a right to use an identical mark or one that, as applied to the goods or services of another person, would be likely to cause confusion, mistake or to deceive. The bill authorizes the department to demand a drawing of a collective mark, and requires an applicant to provide three specimens of the mark as actually used.

Filing of Applications The bill creates a process for review of applications by the department, allows for amendments to be made to applications, and the disclaimer of unregistrable components of a mark by an applicant. The bill provides for a three month period in which an applicant whose application has been denied to reply to the department or amend its application. It allows the department to extend

this period of time for good cause shown. It provides a right to an administrative hearing under ss. 120.569 and 120.57, F.S., for applicants whose applications have been denied by the department. Finally, it provides that the department will review applications in the order of receipt.

Use By Related Companies The bill revises the provision of the statute regarding use of a mark by related companies to be consistent with Section 5 of the Lanham Act, 15 U.S.C. s. 1055. The bill provides that first use of a mark inures to the benefit of the registrant or applicant for registration if the registrant or applicant controls the first use of the mark by another person.

Certificates of Registration The bill makes conforming changes regarding the identification of a business entity and requires a description of the goods or services to be shown on a certificate. It also deletes the provision applicable to the name reservation section, which is repealed.

Duration and Renewal Consistent with the MSTB, the bill shortens the renewal period of a registration from 10 years to 5 years. The purpose of this change is to "reduce the number of 'deadwood' registrations." It also clarifies that the application for registration must be in a manner and form complying with the requirements of the department. It allows a registration in effect on January 1, 2007, to remain in effect for the unexpired term and requires that any renewal of such a registration be applied for and the fee paid for within six months of the expiration of the registration. It also requires a renewal application to include a verified statement that the mark is still in use in Florida and include a specimen showing actual use.

Assignments; Change of Name; Security Interests The bill provides that a photocopy of an assignment will be accepted for recording if certified by any of the parties to the assignment or their successors as being a true and correct copy. It allows a registrant or applicant to record a certificate of change of name with the department upon payment of a fee of $50.00 and provides that the failure to record a name change will not affect a person's substantive rights in the mark or registration. It also provides that acknowledgement will be prima facie evidence of the execution of a document and when recorded, the record will be prima facie evidence of execution. Finally, the bill clarifies that security interests in a mark shall be created and perfected according to chapter 679, Florida Statutes, the Uniform Commercial Code.

Records The bill requires the department to keep for public inspection the assignment and change of name records filed with it under s. 495.181, F.S.

Cancellation The bill makes technical changes to the provisions of s. 495.101, F.S., regarding the basis for cancellation of a registration consistent with the Lanham Act. It removes the definition of "abandoned" to conform with the revised definition in s. 495.011, F.S. It requires the department to cancel a mark that has become the generic name for goods or services, or a portion thereof, for which the mark has been registered. It also clarifies that a registrant may use a certification mark in advertising or promoting recognition of the certification program or of goods or services meeting the certification standards of the registrant even if the mark is cancelled.

Classification The bill expressly adopts the updated International Trademark Classification System. It also adopts the United States Patent and Trademark Office's system for classifying certification and collective membership marks.

Infringement The bill conforms the infringement provisions of the law to the Lanham Act and clarifies that the basis for infringement is use of a mark or an imitation or copy of a mark, without the consent of the registrant, in a manner that is likely to cause confusion, to cause a mistake or to deceive.

Remedies The bill adds a prevailing party attorney's fee provision which would give the court discretion to award attorney's fees to the prevailing party "according to the circumstances of the case."

Forum for Actions Regarding Registrations The bill creates a new provision specifying the venue for cancellation actions in any court of competent jurisdiction in Florida and clarifying that the Department of State cannot be made a party to such actions. This provision is intended to clear up confusion among applicants and practitioners concerning the procedure in cancellation proceedings.

Dilution The bill creates a new standard for actions seeking to prevent the dilution of a registered mark. It allows the owner of a mark that is "famous" in the state to seek to enjoin or obtain other relief against a person's commercial use of a mark or trade name if such use begins after the mark has become famous and is likely to cause dilution of the mark. The bill sets, without limitation, some criteria that a court may use in determining whether a mark has become distinctive and famous, which include:

- The degree of inherent or acquired distinctiveness of the mark in Florida;
- The duration and extent of use of the mark in connection with the goods and services with which the mark is used;
- The duration and extent of advertising and publicity of the mark in Florida;
- The geographical extent of the trading area in which the mark is used;
- The channels of trade for the goods or services with which the mark is used;
- The degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark's owner and the person against whom the injunction is sought;
- The nature and extent of the use of the same or similar mark by third parties; and
- Whether the mark is subject to a state registration in Florida or federal registration under a federal trademark act.

The bill limits relief to an injunction unless the person against whom the injunction is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. In the case where willful intent is proven and the affected mark is registered in Florida, the owner of the mark will be entitled to damages and attorney's fees as provided in s. 495.141, F.S.

Effective Date; Repeal of Prior Acts The bill would expressly repeal ss. 506.06 – 506.13, F.S., the remaining provisions of Florida's Stamped or Marked Containers and Baskets Law on the effective date of the law, January 1, 2007, and provides that the law will not affect actions or proceedings pending on that date.

Construction of chapter The bill notes that since the intent of the chapter is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection, construction given the federal act should be examined as persuasive authority for interpreting and construing this chapter.

Fees The bill locates all applicable trademark filing fees in one section. Such fees would remain at their current level. The fees are:

- Application filing fee: $87.50 per class.
- Renewal application fee: $87.50 per class.
- Assignment filing fee: $50.00 per class.
- Certificate of name change filing fee: $50.00.
- Voluntary cancellation filing fee: $50.00.
- Certificate of registration under seal: $8.75.
- Certified copy of application file: $52.50.

C. SECTION DIRECTORY:

Section 1. Creates s. 495.001, F.S.; providing a popular name.
Section 2. Amends s. 495.011, F.S.; providing definitions.
Section 3. Amends s. 495.021, F.S.; relating to the registrability of a mark.
Section 4. Repeals s. 495.027, F.S.; relating to the reservation of a mark.

Section 5. Amends s. 495.031, F.S.; relating to applications for registration.
Section 6. Creates s. 495.035, F.S.; providing for the filing of applications for registration.
Section 7. Amends s. 495.041, F.S.; relating to use of a mark by related companies.
Section 8. Amends s. 495.061, F.S.; relating to certificates of registration.
Section 9. Amends s. 495.071, F.S.; relating to the duration of a registered mark and renewal.
Section 10. Amends s. 495.081, F.S.; relating to assignments, changes of name and security interests.
Section 11. Amends s. 495.091, F.S.; relating to records retention by the Department.
Section 12. Amends s. 495.101, F.S.; relating to the cancellation of a mark.
Section 13. Amends s. 495.111, F.S.; relating to the classification of goods and services.
Section 14. Amends s. 495.131, F.S.; relating to liability for the infringement of a registered mark.
Section 15. Amends s. 495.141, F.S.; providing remedies for violation of the trademark law.
Section 16. Creates s. 495.145, F.S.; providing a forum for actions regarding registrations.
Section 17. Amends s. 495.151, F.S.; relating to the dilution of a mark.
Section 18. Amends s. 495.161, F.S.; relating to common-law rights.
Section 19. Amends s. 495.171, F.S.; relating to the effective date of the act and repeal of conflicting provisions.
Section 20. Amends s. 495.181, F.S.; providing for construction of the trademark law consistent with the federal trademark law.
Section 21. Creates s. 495.191, F.S.; providing for fees relating to applications and other documents.
Section 22. Repeals ss. 506.06-506.13, F.S.
Section 23. Provides an effective date of January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Department of State, Division of Corporations, which oversees the trademark law, the primary effect of the bill will be to require approximately 500 persons or entities to pay the $50 fee each year for renewal of a registered mark, roughly doubling the number of renewal applications because of the shortened term of registration. However, the experience of the Division is that most marks have a life span of approximately three years, so the fiscal impact of the renewals required by the shortened term of registration will be insignificant.

The Division also reports that records maintenance will be significantly improved, since records will be purged on a five-year cycle, not a ten-year cycle. This will result in more up-to-date records in the trademark and service mark database, benefiting consumers who search it.

The bill also maintains fees applicable to trademark registrations and related activities at their current level.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to trademarks; creating s. 495.001, F.S.; providing a short title; amending s. 495.011, F.S.; providing definitions; amending s. 495.021, F.S.; precluding registration of certain marks; repealing s. 495.027, F.S., relating to reservation of a mark; amending s. 495.031, F.S.; providing requirements for information to be contained in an application for registration of a mark; authorizing the Department of State to require certain information in an application; requiring that the application be signed and verified by any of certain persons; requiring that the application be accompanied by three specimens showing the mark; requiring that the application be accompanied by a fee; creating s. 495.035, F.S.; providing filing guidelines for applications; providing for disclaimers of unregistrable components; providing for amendment and judicial review; providing for priority of registrations; amending s. 495.041, F.S.; providing that first use shall inure to the benefit of the registrant or applicant under certain circumstances; amending s. 495.061, F.S.; providing for the issuance of a certificate of registration by the department; removing a provision relating to reservation of a mark; amending s. 495.071, F.S.; providing guidelines for the renewal of marks; revising duration of effectiveness of a registration; amending s. 495.081, F.S.; providing for the assignability of marks; authorizing a photocopy of an assignment to be acceptable for recording; providing for

change of name certificates for registrants; authorizing recordation of certain instruments; providing acknowledgment of recording as prima facie evidence of the execution of an assignment or other instrument; specifying requirements for creation and perfection of security interests in marks; amending s. 495.091, F.S.; requiring the department to record all marks registered with the state; amending s. 495.101, F.S.; requiring the department to cancel certain marks; amending s. 495.111, F.S., which establishes a classification of goods and services; providing that a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used comprised in one or more of the classes listed; amending s. 495.131, F.S.; revising infringement provisions to include an element of lack of consent by the registrant; conforming language; amending s. 495.141, F.S.; providing additional remedies for the unauthorized use of a mark; creating s. 495.145, F.S.; providing a forum for actions regarding registration; providing for service of process on nonresident registrants; amending s. 495.151, F.S.; providing for an injunction in cases of dilution of a famous mark; providing factors to be considered in determining that a mark is famous; providing damages in certain circumstances of dilution; amending s. 495.161, F.S.; deleting language relating to the diminishing of certain common law rights; amending s. 495.171, F.S.; providing effective date of changes to ch. 495, F.S., as

amended by the act; providing for repeal of conflicting acts; providing application to pending actions; amending s. 495.181, F.S.; providing construction and legislative intent; creating s. 495.191, F.S.; providing certain fees; repealing s. 506.06, F.S., relating to unlawful to counterfeit trademark, to conform; repealing s. 506.07, F.S., relating to filing of trademark or other form of advertisement for record with Department of State, to conform; repealing s. 506.08, F.S., relating to fee for filing, to conform; repealing s. 506.09, F.S., relating to civil remedies, to conform; repealing s. 506.11, F.S., relating to unlawful use of trademark, to conform; repealing s. 506.12, F.S., relating to procuring the filing of trademark or other form of advertisement by fraudulent representations, to conform; repealing s. 506.13, F.S., relating to using the name or seal of another, to conform; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 495.001, Florida Statutes, is created to read:

495.001 Short title.--This chapter may be cited as the "Registration and Protection of Trademarks Act."

Section 2. Section 495.011, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 495.011, F.S., for present text.)

495.011 Definitions.--As used in this chapter:

(1) "Abandoned" applies to a mark when either of the following occurs:

(a) When its use has been discontinued with intent not to resume such use. Intent not to resume use may be inferred from circumstances. Nonuse for 3 consecutive years shall constitute prima facie evidence of abandonment.

(b) When any course of conduct of the owner, including acts of omission or commission, causes the mark to lose its significance as a mark.

(2) "Applicant" means the person filing an application for registration of a mark under this chapter and the legal representatives, successors, or assigns of such person.

(3) "Certification mark" means any word, name, symbol, or device, or any combination thereof, used by a person other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

(4) "Collective mark" means a trademark or service mark used by the members of a cooperative, an association, or other collective group or organization, and includes marks used to indicate membership in a union, an association, or other organization.

(5) "Department" means the Florida Department of State or its designee charged with the administration of this chapter.

(6) "Dilution" means the lessening of the capacity of a

mark to identify and distinguish goods or services, regardless of the presence or absence of:

(a) Competition between the owner of the mark and other parties.

(b) Likelihood of confusion, mistake, or deception.

(7) "Mark" includes any trademark, service mark, certification mark, or collective mark entitled to registration under this chapter, whether or not registered.

(8) "Person," and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this chapter, means a juristic person as well as a natural person. "Juristic person" includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.

(9) "Registrant" means the person to whom the registration of a mark under this chapter is issued and the legal representatives, successors, or assigns of such person.

(10) "Related company" means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.

(11) "Service mark" means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of such person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or

television programs may be registered as service marks notwithstanding that the person or the programs may advertise the goods of the sponsor.

(12) "Trade name" means any name used by a person to identify a business or vocation of such person.

(13) "Trademark" means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if the source is unknown.

(14) "Use" means the bona fide use of a mark in the ordinary course of trade and not used merely for the purpose of reserving a right in a mark. For purposes of this chapter, a mark is deemed to be in use:

(a) On goods when:

1. The mark is placed in any manner on the goods, their containers or the displays associated therewith, or on the tags or labels affixed thereto, or, if the nature of the goods makes such placement impracticable, on documents associated with the goods or their sale; and

2. The goods are sold or transported in this state.

(b) On services when the mark used or displayed in the sale or advertising of services and the services are rendered in this state.

Section 3. Subsection (1) of section 495.021, Florida Statutes, is amended to read:

495.021 Registrability.--

(1) A mark by which the goods or services of any applicant

for registration may be distinguished from the goods or services of others shall not be registered if it:

(a) Consists of or~~,~~ comprises ~~or includes~~ immoral, deceptive, or scandalous matter; ~~or~~

(b) Consists of or~~,~~ comprises ~~or includes~~ matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; ~~or~~

(c) Consists of or ~~,~~ comprises ~~or includes~~ the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; ~~or~~

(d) Consists of or ~~,~~ comprises a ~~or includes the~~ name, signature, or portrait identifying a particular ~~of any~~ living individual, except by ~~with~~ her or his written consent, or the name, signature, or portrait of a deceased President of the United States during the lifetime of his widow or her widower, if any, except by the written consent of the widow or widower; ~~or~~

(e) Consists of a mark which:

1. When used on or in connection with ~~applied to~~ the goods ~~or services~~ of the applicant, is merely descriptive or deceptively misdescriptive of the goods; ~~them,~~

2. When used on or in connection with ~~applied to~~ the goods ~~or services~~ of the applicant, is primarily geographically descriptive ~~or deceptively misdescriptive~~ of the goods; ~~them or their source or origin, or~~

3. When used on or in connection with the goods of the

applicant, is primarily geographically misdescriptive of the goods;

4.~~3.~~ Is primarily merely a surname; or~~,~~

5. Comprises any matter that, as a whole, is functional.

Except as expressly excluded in subparagraphs 3. and 5., ~~provided, however, that~~ nothing in this paragraph shall prevent the registration of a mark used ~~in this state~~ by the applicant which has become distinctive of the applicant's goods or services ~~in this state or elsewhere~~. The department ~~of State~~ may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with ~~applied to~~ the applicant's goods or services, proof of substantially exclusive and continuous use thereof as a mark by the applicant in this state or elsewhere for the 5 years before ~~next preceding~~ the date on which the claim of distinctiveness is made; or

(f) Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive. Registration shall not be denied solely on the basis of reservation or registration by another of a corporate name or fictitious name that is the same or similar to the mark for which registration is sought.

Section 4. Section 495.027, Florida Statutes, is repealed.

Section 5. Section 495.031, Florida Statutes, is amended to read:

495.031 Application for registration.--

(1) Subject to the limitations set forth in this chapter, any person who ~~adopts and~~ uses a trademark or service mark in this state may file with the department ~~of State~~, in a manner and ~~on a~~ form complying with the requirements of ~~to be furnished by~~ the department, an application for registration of that ~~trademark or service~~ mark setting forth, but not limited to, the following information:

(a) The name and business address of the person applying for such registration, and, if a business entity, the place ~~corporation, the state~~ of incorporation or organization;

(b) The goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class or classes in which such goods or services fall;

(c) The date ~~when~~ the mark was first used anywhere and the date ~~when~~ it was first used in this state by the applicant, the applicant's ~~or her or his~~ predecessor in interest, ~~business~~ or a related company of the applicant ~~or the applicant's predecessor~~; and

(d) A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the best of the applicant's knowledge, no other person except a related company has registered such mark in this state, or has the right to use such mark in this state, either in the identical form thereof or in such near resemblance thereto as to be likely when, applied to the goods or services of such other person, to cause confusion, to cause mistake, or to deceive ~~or confuse or to be mistaken therefor~~.

(2) Every applicant for registration of a certification mark in this state shall file with the department ~~of State~~, in a manner and ~~on a~~ form complying with the requirements of ~~to be furnished by~~ the department, an application setting forth, but not limited to, the following information:

(a) The information required by paragraph (1)(a);

(b) The date when the certification mark was first used anywhere and the date when it was first used in this state under the authority of the applicant;

(c) The manner in which and the conditions under which the certification mark is used in this state; and

(d) A statement that the applicant is exercising control over the use of the mark, that the applicant is not herself or himself engaged in the production or marketing of the goods or services to which the mark is applied, and that no person except the applicant or persons authorized by the applicant, or related companies thereof, has the right to use such mark in this state either in the identical form thereof or in such near resemblance thereto as to be likely to deceive or confuse or to be mistaken therefor.

(3) Every applicant for registration of a collective mark in this state shall file with the department ~~of State~~, in a manner and ~~on a~~ form complying with the requirements of ~~to be furnished by~~ the department, an application setting forth, but not limited to, the following information:

(a) The information required by paragraphs (1)(a) and (b);

(b) The date when the collective mark was first used anywhere and the date when it was first used in this state by

any member of the applicant or a related company of such member;

(c) The class of persons entitled to use the mark, indicating their relationship to the applicant, and the nature of the applicant's control over the use of the mark; and

(d) A statement that no person except the applicant or members of the applicant, or related companies thereof, has the right to use such mark in this state either in the identical form thereof or in such near resemblance thereto as to be likely to deceive or confuse or to be mistaken therefor.

(4) The department may also require that a drawing of the mark, complying with the requirements of the department, accompany the application.

(5) ~~(4)~~ Every application under this section shall be signed and verified by the applicant or by a member of the firm or an officer or other authorized representative of the business entity ~~of the corporation, association, union or other organization~~ applying.

(6) ~~(5)~~ Every application under this section shall be accompanied by three specimens showing the mark as actually used ~~a specimen or facsimile of such mark in triplicate~~.

(7) ~~(6)~~ Every application under this section shall be accompanied by a filing fee ~~of $87.50,~~ payable to the department in accordance with s. 495.191 ~~of State, for each class of goods or services as specified in s. 495.111, in connection with which the mark is used~~.

Section 6. Section 495.035, Florida Statutes, is created to read:

495.035 Filing of applications.--

(1) Upon the receipt of an application for registration and payment of the application fee, the department may cause the application to be examined for conformity with this chapter.

(2) The applicant shall provide any additional pertinent information requested by the department, including a description of a design mark, and may make, or authorize the department to make, such amendments to the application as may be reasonably requested by the department or deemed by applicant to be advisable to respond to any rejection or objection.

(3) The department may require the applicant to disclaim an unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application, if the disclaimed matter is or has become distinctive of the applicant's or registrant's goods or services.

(4) Amendments may be made by the department upon the application submitted by the applicant upon the applicant's agreement, or a new application may be required to be submitted. Amendments to an otherwise properly filed application shall not affect the application filing date for purposes of determining the applicant's or registrant's filing priority rights.

(5) If the applicant is found not to be entitled to registration, the department shall advise the applicant of the rejection and of the reasons for rejection. The applicant shall have 3 months in which to reply or amend the application, in

which event the application shall be reexamined. This procedure may be repeated until:

(a) The department makes final its refusal to register the mark; or

(b) The applicant fails to reply or amend the application within the specified period, whereupon the application shall be abandoned.

For good cause shown, such as the pendency of litigation involving the mark, the department may extend the period of time in which to respond to the rejection or suspend examination of the application.

(6) If the department makes its final refusal to register the mark, the applicant may seek review of such decision in accordance with ss. 120.569 and 120.57.

(7) In the event of multiple applications concurrently being processed by the department which seek registration of the same or confusingly similar marks for the same or related goods or services, the department shall grant priority to the applications in order of receipt. If a prior-received application is granted a registration, the other application or applications shall then be rejected. The applicant of a rejected application may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of s. 495.101(3).

Section 7. Section 495.041, Florida Statutes, is amended to read:

495.041 Use by related companies.--Where a mark registered

or unregistered is or may be used legitimately by related companies, such use shall inure to the benefit of the owner of the mark, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public. If first use of a mark by a person is controlled by the registrant or applicant for registration of a mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of that registrant or applicant, as the case may be.

Section 8. Section 495.061, Florida Statutes, is amended to read:

495.061 Certificate of registration.--

(1) Upon compliance by the applicant with the requirements of this chapter, the department ~~of State~~ shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the state, and it shall show the name and business address and, if a business entity ~~corporation~~, the place ~~state~~ of incorporation or organization, of the person claiming ownership of the mark in this state, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class or classes of goods or services and a description of the goods or services on or in connection with ~~on~~ which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

(2) Any certificate of registration issued by the department ~~of State~~ under the provisions hereof or a copy

thereof duly certified by the department ~~of State~~ shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any action or judicial proceedings in any court of this state, and shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in this state on or in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein.

~~(3) Contingent on the registration of a mark under this chapter, the reservation of such mark based on intent to use, as provided in this chapter, shall be prima facie evidence of priority of ownership of such mark within this state on or in connection with the goods or services specified in the reservation against any other person, except for a person whose mark has not been abandoned and who, prior to such reservation, has used the mark within this state on or in connection with such goods or services.~~

Section 9. Section 495.071, Florida Statutes, is amended to read:

495.071 Duration and renewal.--

(1) Registration of a mark hereunder shall be effective for a term of 5 ~~10~~ years from the date of registration and, upon application filed within 6 months prior to the expiration of such term, in a manner and form complying with the requirements of ~~on a form to be furnished by~~ the department ~~of State~~, the registration may be renewed for a like term beginning at the end of the expiring term. Every application under this section shall

be accompanied by a filing fee ~~A renewal fee of $87.50 for each class of goods or services with respect to which such renewal is sought~~, payable to the department in accordance with s. 495.191 ~~of State, shall accompany the application for renewal of the registration~~.

(2) A ~~mark~~ registration may be renewed for successive periods of 5 ~~10~~ years in like manner.

(3) Any registration in effect on January 1, 2007, shall continue in effect for the unexpired term thereof and may be renewed by filing an application for renewal with the department in a manner and form complying with the requirements of the department and paying the renewal fee therefor within 6 months prior to the expiration of the registration. ~~The Department of State shall notify registrants of marks hereunder of the necessity of renewal within the year next preceding the expiration of the 10 years from the date of registration by writing to the last known address of the registrants. The department shall prescribe the forms on which to make the required notification and the renewal called for in subsection (1) and may substitute the uniform business report, pursuant to s. 606.06, as a means of satisfying the requirement of this part.~~

(4) All applications for renewal ~~renewals~~ under this chapter, whether of registrations made under this act or of registrations made under any prior acts, shall include a verified statement that the mark is still in use in this state, and shall include a specimen showing actual use of the mark on or in connection with the goods or services subject to the

renewal application, or shall state that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

Section 10. Section 495.081, Florida Statutes, is amended to read:

495.081 Assignments; changes of name; security interests ~~Assignment~~.--

(1) A registered mark or a mark for which an application for registration has been filed ~~Any mark and its registration hereunder~~ shall be assignable with the goodwill ~~good will~~ of the business in which the mark is used or with that part of the goodwill ~~good will~~ of the business connected with the use of and symbolized by the mark. Assignments ~~Assignment~~ shall be by an instrument ~~instruments~~ in writing duly executed and may be recorded with the department ~~of State~~ upon the payment of the applicable ~~a~~ fee. A photocopy of an assignment shall be accepted for recording if it is certified by any of the parties thereto, or their successors, to be a true and correct copy of the original. Upon recording of the assignment, ~~of $50, payable to~~ the department ~~of State~~ ~~which, upon recording of the assignment,~~ shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof.

(2) An assignment of any registration under this chapter shall be void ~~as~~ against any subsequent purchaser for valuable consideration without notice, unless such assignment is recorded with the department ~~of State~~ within 3 months after the date of the assignment or prior to the subsequent purchase ~~thereof or at~~

~~any time after the expiration of such 3-month period, unless an assignment given in connection with any subsequent purchase is recorded with the Department of State prior to or within 10 days after such assignment is recorded~~.

(3) A registrant or applicant for registration effecting a change of the name may record a certificate of change of name of the registrant or applicant with the department upon the payment of the recording fee payable to the department in accordance with s. 495.191. In the case of a pending application for a mark that becomes approved for registration, the department shall issue a certificate of registration in the registrant's new name. In the case of a registered mark, the department shall issue a new certificate of registration in the registrant's new name for the remainder of the term of the registration or last renewal thereof. A person's failure to record a name change in accordance with this subsection shall not affect the person's substantive rights in the mark or its registration.

(4) Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the department, the record shall be prima facie evidence of execution.

(5) Security interests in marks shall be created and perfected in accordance with chapter 679.

Section 11. Section 495.091, Florida Statutes, is amended to read:

495.091 Records.--The department ~~of State~~ shall keep for public examination a record of all marks registered or renewed

under this chapter, including all documents recorded under s. 495.081.

Section 12. Section 495.101, Florida Statutes, is amended to read:

495.101 Cancellation.--The department ~~of State~~ shall cancel from the register:

~~(1) After 1 year from the effective date of this chapter, all registrations under prior laws which are more than 10 years old and not renewed in accordance with this chapter.~~

(1)~~(2)~~ Any registration for ~~concerning~~ which the department ~~of State~~ has received ~~shall receive~~ a voluntary request for cancellation by the registrant, which request shall be in a manner and form complying with the requirements of the department ~~thereof from the registrant~~.

(2)~~(3)~~ All registrations granted under this chapter and not renewed in accordance with the provisions hereof.

(3)~~(4)~~ Any registration for ~~concerning~~ which a court of competent jurisdiction finds ~~shall find~~ that:

(a) The registered mark has been abandoned. ~~A mark shall be deemed to be "abandoned" when either of the following occurs:~~

~~1. When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 2 consecutive years shall be prima facie evidence of abandonment.~~

~~2. When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used, or otherwise to lose its significance as a~~

~~mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.~~

(b) The registrant ~~of a trademark or service mark~~ is not the owner of the mark.

(c) The registration was granted improperly.

(d) The registration was obtained fraudulently.

(e) The mark is or has become the generic name for the goods or services, or a portion thereof, for which the mark has been registered.

(f) ~~(e)~~ The registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; ~~provided,~~ however, ~~that~~ should the registrant prove that the registrant ~~she or he~~ is the owner of a concurrent registration of a ~~her or his~~ mark in the United States Patent and Trademark Office covering an area including this state, the registration hereunder shall not be canceled.

(g) ~~(f)~~ In the case of a certification mark, that the registrant does not control or is not able to exercise control over the use of such mark; or engages in the production or marketing of any goods or services to which the certification mark is applied; or the registrant permits the use of the certification mark for purposes other than to certify; or the registrant discriminately refuses ~~refused~~ to certify or ~~to~~ continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.

Nothing in this paragraph shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of the goods or services meeting the certification standards of the registrant.

(4) ~~(5)~~ When a court of competent jurisdiction shall order cancellation of a registration on any ground.

Section 13. Section 495.111, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 495.111, F.S., for present text.)

495.111 Classification.--

(1) The following general classes of goods and services, conforming to the classification adopted by the United States Patent and Trademark Office, are established for convenience of administration of this chapter:

(a) Goods:

1. Class 1 Chemicals used in industry, science, and photography; agriculture, horticulture, and forestry; unprocessed artificial resins and, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; and adhesives used in industry.

2. Class 2 Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; and metals in foil and powder form for painters, decorators, printers, and artists.

3. Class 3 Bleaching preparations and other substances

for laundry use; cleaning, polishing, scouring, and abrasive preparations; soaps; perfumery, essential oils, cosmetics, and hair lotions; and dentifrices.

4. Class 4 Industrial oils and greases; lubricants; dust absorbing, wetting, and binding compositions; fuels (including motor spirit) and illuminants; and candles and wicks for lighting.

5. Class 5 Pharmaceuticals and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use and food for babies; plasters and materials for dressings; material for stopping teeth and dental wax; disinfectants; preparations for destroying vermin; and fungicides and herbicides.

6. Class 6 Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery and small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; and ores.

7. Class 7 Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.

8. Class 8 Hand tools and hand-operated implements; cutlery; side arms; and razors.

9. Class 9 Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), and life-saving and teaching apparatus

and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating, or controlling electricity; apparatus for recording, transmission, or reproduction of sound or images; magnetic data carriers and recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, and data processing equipment and computers; and fire-extinguishing apparatus.

10. Class 10 Surgical, medical, dental, and veterinary apparatus and instruments, artificial limbs, eyes, and teeth; orthopedic articles; and suture materials.

11. Class 11 Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.

12. Class 12 Vehicles; apparatus for locomotion by land, air, or water.

13. Class 13 Firearms; ammunition and projectiles; explosives; and fireworks.

14. Class 14 Precious metals and their alloys and goods in precious metals or coated therewith (not included in other classes); jewelry and precious stones; and horological and chronometric instruments.

15. Class 15 Musical instruments.

16. Class 16 Paper, cardboard, and goods made from these materials (not included in other classes); printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture);

instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; and printing blocks.

17. Class 17 Rubber, gutta-percha, gum, asbestos, mica, and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping, and insulating materials; and flexible pipes not of metal.

18. Class 18 Leather and imitations of leather and goods made of these materials and not included in other classes; animal skins and hides; trunks and traveling bags; umbrellas, parasols, and walking sticks; and whips, harness, and saddlery.

19. Class 19 Building materials (nonmetallic); nonmetallic rigid pipes for building; asphalt, pitch, and bitumen; nonmetallic transportable buildings; monuments, not of metal.

20. Class 20 Furniture, mirrors, and picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, and meerschaum and substitutes for all these materials, or of plastics.

21. Class 21 Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel wool; unworked or semiworked glass (except glass used in building); and glassware, porcelain, and earthenware not included in other classes.

22. Class 22 Ropes, string, nets, tents, awnings,

tarpaulins, sails, sacks, and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); and raw fibrous textile materials.

23. Class 23 Yarns and threads for textile use.

24. Class 24 Textiles and textile goods not included in other classes and bed and table covers.

25. Class 25 Clothing, footwear, and headgear.

26. Class 26 Lace and embroidery, ribbons, and braid; buttons, hooks and eyes, pins, and needles; and artificial flowers.

27. Class 27 Carpets, rugs, mats and matting, linoleum, and other materials for covering existing floors; and wall hangings (nontextile).

28. Class 28 Games and playthings; gymnastic and sporting articles not included in other classes; and decorations for Christmas trees.

29. Class 29 Meat, fish, poultry, and game; meat extracts; preserved, dried, and cooked fruits and vegetables; jellies, jams, and compotes; eggs, milk, and milk products; and edible oils and fats.

30. Class 30 Coffee, tea, cocoa, sugar, rice, tapioca, sago, and artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, and ices; honey and treacle; yeast, baking powder; salt, and mustard; vinegar and sauces (condiments); spices; and ice.

31. Class 31 Agricultural, horticultural, and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants, and flowers;

foodstuffs for animals and malt.

32. Class 32 Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; and syrups and other preparations for making beverages.

33. Class 33 Alcoholic beverages except beers.

34. Class 34 Tobacco; smokers' articles; and matches.

(b) Services:

1. Class 35 Advertising; business management; business administration; and office functions.

2. Class 36 Insurance; financial affairs; monetary affairs; and real estate affairs.

3. Class 37 Building construction; repair; and installation services.

4. Class 38 Telecommunications.

5. Class 39 Transport; packaging and storage of goods; and travel arrangements.

6. Class 40 Treatment of materials.

7. Class 41 Education; providing of training; entertainment; and sporting and cultural activities.

8. Class 42 Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; and legal services.

9. Class 43 Services for providing food and drink; and temporary accommodation.

10. Class 44 Medical services; veterinary services; hygienic and beauty care for human beings or animals; and agriculture, horticulture, and forestry services.

11. Class 45 Personal and social services rendered by others to meet the needs of individuals; and security services for the protection of property and individuals.

(c) Certification and collective membership marks:

1. Class 200 Collective membership marks.

2. Class A Certification marks for goods.

3. Class B Certification marks for services.

(d) The goods and services recited in collective trademark and collective service mark applications are assigned to the same classes that are appropriate for those goods and services in general.

(2) The establishment of the classes of goods and services set forth in subsection (1) is not for the purpose of limiting or extending the rights of the applicant or registrant. A single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used comprised in one or more of the classes listed, but in the event that a single application includes goods or services in connection with which the mark is being used which fall within different classes of goods or services, a fee equaling the sum of the fees for registration in each class shall be payable.

Section 14. Section 495.131, Florida Statutes, is amended to read:

495.131 Infringement.--Subject to the provisions of s. 495.161, any person who shall, without the consent of the registrant:

(1) Use~~, without the consent of the registrant,~~ any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter ~~on any goods or~~ in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, ~~or~~ to cause mistake, or to deceive ~~as to the source or origin of such goods or services~~; or

(2) Reproduce, counterfeit, copy, or colorably imitate a ~~any such~~ mark registered under this chapter and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection ~~conjunction~~ with the sale, ~~offering for sale,~~ distribution, or advertising ~~in this state~~ of goods or services on or in connection with which such use is likely to cause confusion, to cause mistake, or to deceive;

shall be liable in a civil action by the owner of such registered mark for any or all of the remedies provided in s. 495.141, except that under subsection (2) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

Section 15. Section 495.141, Florida Statutes, is amended to read:

495.141 Remedies.--

(1) Any owner of a mark registered under this chapter may proceed by suit to enjoin the manufacture, use, display, or sale

of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale and to pay the costs of the action; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three ~~3~~ times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court may also award reasonable attorney's fees to the prevailing party according to the circumstances of the case.

(2) The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

Section 16. Section 495.145, Florida Statutes, is created

to read:

495.145 Forum for actions regarding registration.--An action seeking cancellation of a registration of a mark registered under this chapter may be brought in any court of competent jurisdiction in this state. Service of process on a nonresident registrant may be made in accordance with s. 48.181. The department shall not be made a party to cancellation proceedings.

Section 17. Section 495.151, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 495.151, F.S., for present text.)

495.151 Dilution.--

(1) The owner of a mark that is famous in this state shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction and to obtain such other relief against another person's commercial use of a mark or trade name if such use begins after the mark has become famous and is likely to cause dilution of the distinctive quality of the famous mark, as provided in this section. In determining whether a mark is distinctive and famous, a court may consider factors, including, but not limited to:

(a) The degree of inherent or acquired distinctiveness of the mark in this state.

(b) The duration and extent of use of the mark in connection with the goods and services with which the mark is used.

(c) The duration and extent of advertising and publicity

of the mark in this state.

(d) The geographical extent of the trading area in which the mark is used.

(e) The channels of trade for the goods or services with which the mark is used.

(f) The degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark's owner and the person against whom the injunction is sought.

(g) The nature and extent of use of the same or similar mark by third parties.

(h) Whether the mark is the subject of a state registration in this state or a federal registration under the Federal Trademark Act of March 3, 1881, or the Federal Trademark Act of February 20, 1905, or a principal register registration under the Federal Trademark Act of July 5, 1946.

(2) In an action brought under this section, the owner of a famous mark shall be entitled only to injunctive relief in this state unless the person against whom the injunctive relief is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If such willful intent is proven, and the mark is registered in this state, the owner shall also be entitled to all remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

(3) The following shall not be actionable under this section:

(a) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the

competing goods or services of the owner of the famous mark.

(b) Noncommercial use of the mark.

(c) All forms of news reporting and news commentary.

Section 18. Section 495.161, Florida Statutes, is amended to read:

495.161 Common-law rights.--Nothing herein shall adversely affect ~~or diminish~~ the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

Section 19. Section 495.171, Florida Statutes, is amended to read:

495.171 Effective date; repeal of conflicting ~~prior~~ acts.--

(1) This chapter, as amended by this act, shall be in force and take effect January ~~October~~ 1, 2007 ~~1967~~, ~~after its enactment,~~ but shall not affect any suit, proceeding, or appeal then pending.

(2) Sections 506.06-506.13 ~~Former ss. 495.01-495.14~~ are repealed on January 1, 2007 ~~the effective date of this act~~, provided that as to any suit, proceeding or appeal, and for that purpose only, pending at the time this chapter, as amended by this act, takes effect such repeal shall be deemed not to be effective until final determination of said pending suit, proceeding or appeal.

Section 20. Section 495.181, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 495.181, F.S., for present text.)

495.181 Construction of chapter.--The intent of this

chapter is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, as amended. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing this chapter.

Section 21. Section 495.191, Florida Statutes, is created to read:

495.191 Fees.--Filing and other applicable fees payable to the department under this chapter shall be as follows:

(1) Application filing fee: $87.50 per class.

(2) Renewal application fee: $87.50 per class.

(3) Assignment filing fee: $50 per class.

(4) Certificate of name change filing fee: $50.

(5) Voluntary cancellation filing fee: $50.

(6) Certificate of registration under seal: $8.75.

(7) Certified copy of application file: $52.50.

Section 22. Sections 506.06, 506.07, 506.08, 506.09, 506.11, 506.12, and 506.13, Florida Statutes, are repealed.

Section 23. This act shall take effect January 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **HB 7107**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative(s) Bilirakis offered the following:

Amendment

Remove line(s) 162 and insert:

(b) On services when the mark is used or displayed in the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (2)

Bill No. **HB 7107**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative(s) Bilirakis offered the following:

Amendment

Remove line(s) 190-191 and insert:

or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (3)

Bill No. **HB 7107**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative(s) Bilirakis offered the following:

Amendment

Remove line(s) 193-198 and insert:

or services of the applicant, is primarily geographically descriptive ~~or deceptively misdescriptive~~ of them; ~~or their source or origin, or~~

3. When used on or in connection with the goods or services of the applicant, is primarily geographically deceptively misdescriptive of them;

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (4)

Bill No. **7107**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation and Economic Development Appropriations

Representative(s) Bilirakis offered the following:

Amendment

Remove line(s) 203 and insert:

~~provided, however, that~~ nothing in this paragraph (e) shall prevent

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amend 4 to HB 7107

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (5)

Bill No. **HB 7107**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative(s) Bilirakis offered the following:

Amendment

Remove line(s) 249 and insert:

in such near resemblance thereto as to be likely, when applied

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (6)

Bill No. **7107**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation and Economic Development Appropriations

Representative(s) Bilirakis offered the following:

Amendment

Remove line(s) 269-272 and insert:

companies thereof, has the right to use such mark in this state, either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion, to cause mistake, or to deceive ~~or confuse or to be mistaken therefor~~.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (7)

Bill No. **7107**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation and Economic Development Appropriations

Representative(s) Bilirakis offered the following:

Amendment

Remove line(s) 287-289 and insert:

right to use such mark in this state, either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion, to cause mistake, or to deceive ~~or confuse or to be mistaken therefor~~.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (8)

Bill No. **HB 7107**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative(s) Bilirakis offered the following:

Amendment

Remove line(s) 299 and insert:

accompanied by three specimens or facsimiles showing the mark as actually used

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (9)

Bill No. **7107**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation and Economic Development Appropriations

Representative(s) Bilirakis offered the following:

Amendment

Remove line(s) 349 and insert:

(6) If the department makes final its refusal to register

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7253 PCB GM 06-02 Growth Management
SPONSOR(S): Growth Management Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Growth Management Committee	8 Y, 1 N	Strickland	Grayson
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) State Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

House Bill 7253 (formerly PCB GM-06-02) revises current law related to growth management. The bill:

- Removes the requirement that the entire local comprehensive plan be financially feasible.
- Provides that a third party challenge, or the outcome of such challenge, to the 5-year schedule of capital improvements does not affect adoption of further plan amendments to the future land use map.
- Provides that challenge to the addition, elimination, deferral or delay of a facility to the 5-year schedule of capital improvements may only occur when the project is first proposed for such addition, elimination, deferral or delay.
- Provides for certain exemptions from transportation concurrency.
- Provides for a waiver of the transportation facilities concurrency requirements for certain urban infill, redevelopment, and downtown revitalization areas.
- Deletes record keeping and reporting requirements related to transportation de minimis impacts.
- Provides that a "not-in-compliance" determination for an amendment to a local government comprehensive plan by the Department of Community Affairs may not be based on school capacity under certain conditions.
- Removes the requirement to incorporate the school concurrency service areas and establishing criteria and standards into the comprehensive plan, when school concurrency is applied on a less than district-wide basis.
- Revises the organization reporting structure for the Century Commission for a Sustainable Florida and provides guidance for the development of its annual budget.
- Provides that federal urban attributable funds are eligible as a local match for transit projects under the Transportation Regional Incentive Program by removing the requirement that the match be a nonfederal share of the project cost for a public transportation facility project.
- Provides for a partial exemption from development of regional impact review for urban service boundaries, infill and redevelopment areas, and rural land stewardship areas if the required binding agreement for the full exemption is not attained.
- Provides for small scale amendments for certain built-out municipalities.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background:

Ch. 2005-290, L.O.F.

The 2005 Legislature enacted ch. 2005-290, L.O.F. (CS/CS/CS SB 360) relating to infrastructure planning and funding. The Act was the subject of a conference committee during the last two days of the 2005 Session. This bill addresses policy refinements related to the substance of the Act.

Comprehensive Plans & Adoption of Amendments

All of Florida's counties and municipalities are required to adopt local government comprehensive plans that guide future growth and development. Each Comprehensive plan contains elements that address future land use, housing, transportation infrastructure coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. Local governments may amend their comprehensive plans twice per year. Exemptions from the frequency of comprehensive plan amendments are provided for various circumstances. Citizens are afforded several opportunities to challenge decisions that may be inconsistent with the Local Government Comprehensive Planning and Land Development Regulation Act., ss. 163.3161-163.3246, F.S.

Concurrency

Concurrency is the concept that the infrastructure necessary to support new development or redevelopment be in place concurrent with that development. The Act established stricter concurrency related to transportation, schools and water infrastructure.

Century Commission

Formed by the Florida Legislature in 2005, the Century Commission is comprised of 15 volunteer members, appointed by the Governor, President of the Senate, and the Speaker of the House of Representatives. The Century Commission is responsible for exploring the impact of estimated population increases and other emerging trends and issues, creating a vision for the future, and developing a strategic action plan to achieve that vision using 15 and 50 year planning time horizons. Each year the Commission is to provide a written report containing specific recommendations for addressing growth management issues.

Transportation Regional Incentive Program (TRIP)

Formed by the Florida Legislature in 2005, TRIP was created to assist in the improvement of regionally significant transportation facilities. State funds are available throughout Florida to provide incentives for local governments and the private sector to help pay for projects that benefit regional travel and commerce. Under current law, the Department of Transportation will match 50 percent of project costs, or up to 50 percent of the nonfederal share of project costs for public transportation facility projects.

Developments of Regional Impact (DRI)

The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. Under existing law, urban service boundaries, infill and redevelopment areas, and rural land stewardship areas are exempt from DRI review provided that a binding agreement is reached between the local government, adjacent jurisdictions, and the Department of Transportation.

Effect of Proposed Changes

Comprehensive Plan

The bill removes the requirement that the entire comprehensive plan adopted by a local government be financially feasible.

The bill provides that the challenge to the addition, elimination, deferral or delay of a facility to the five-year schedule of capital improvements may only occur when the project is first proposed for such addition, elimination, deferral or delay.

The bill provides that a third party challenge, or the outcome of such challenge, to the five-year schedule of capital improvements does not affect adoption of further plan amendments to the future land use map.

Concurrency

Transportation Concurrency

The bill provides that when a local government, in cooperation with the Department of Transportation (DOT), adopts a five-year or longer term transportation improvement plan and makes financial commitments to fund the plan, the local government is deemed to meet transportation concurrency even if in any particular year the improvements are not concurrent.

The bill provides for a waiver of transportation concurrency if a municipality has either an area-wide DRI or a downtown development authority, which boundary has not changed since 2005, and which has adopted a plan to address transportation mitigation, including identified funding to address transportation deficiencies if one has not been adopted as part of the creation of such an area-wide DRI or downtown development authority.

The bill provides legislative findings that urban infill and redevelopment is a high state priority in Florida and should be promoted with incentives.

The bill provides for a waiver of transportation concurrency requirements for urban and redevelopment areas designated in the comprehensive plan for local governments that create a long-term vision that includes adequate finding, services, and multimodal transportation options. Specifically, this provision applies to urban infill and redevelopment areas designated in the comprehensive plan under s. 163.2517, F.S., or areas designated in the comprehensive plan prior to January 1, 2006, as urban infill development, urban redevelopment, or downtown revitalization.

The bill provides for a waiver of transportation concurrency requirements for municipalities that are at least 90% built–out. The bill defines "90% built–out" as it relates to this exemption as "90 percent of the property within the municipality's boundaries, excluding lands that are designated as conservation, preservation, recreation, or public facilities categories, have been developed, or are the subject of an approved development order that has received a building permit and the municipality has an average density of 5 units per acre for residential developments." The bill further provides the following requirements to enjoy the waiver from transportation concurrency:

- The local government and the DOT shall cooperatively establish a plan for maintaining the adopted level-of-service standards established by the DOT.
- The municipality must have adopted an ordinance that provides the methodology for determining its built-out percentage, declare that transportation concurrency requirements are waived within its municipal boundary or within a designated area of the municipality, and address multimodal options and strategies.
- Prior to the adoption of the ordinance, the DOT shall be consulted by the local government to assess the impact that the waiver of the transportation concurrency requirements is expected to have on the adopted level-of-service standards.

- If a municipality annexes any property, the municipality must recalculate its built-out percentage pursuant to the methodology set forth in this ordinance to verify whether the annexed property may be included within this exemption.
- If the municipality enjoys this exemption, the municipality must adopt a comprehensive plan amendment which updates its transportation element to reflect the transportation concurrency requirements waiver and must submit a copy of its ordinance to the Department of Community Affairs (DCA).

The bill removes record keeping and reporting requirements related to transportation de minimis impacts.

School concurrency

The bill provides that a "not-in-compliance" determination for an amendment to a local government comprehensive plan by the DCA shall not be based upon school capacity until December 1, 2008, provided that data and analysis is submitted to DCA demonstrating coordination between the school board and the local government to plan to address capacity issues.

The bill removes the requirement that the school interlocal agreement establish a process and schedule for the mandatory incorporation of the school concurrency service areas and the criteria and standards for establishment of the service areas into the local comprehensive plan.

Comprehensive Plan Amendments

Frequency of Amendments

The bill provides that municipalities that are 90% built-out, are exempt from the statutory limits on the frequency of consideration of amendments to the local comprehensive plan provided that the amendment involves a use of 100 acres or fewer and:

- The municipality has adopted a comprehensive plan amendment which updates its transportation element to reflect the transportation concurrency requirements waiver and must submit a copy of its ordinance to the DCA.
- The cumulative annual effect of the acreage for all amendments adopted does not exceed 500 acres.
- The proposed amendment does not involve the same property that has been granted a change within the prior 12 months.
- The proposed amendment does not involve the same owner's property within 200 feet of property granted a change within the prior 12 months.
- The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan but only proposes a land use change to the future land use map for a site-specific small scale development activity.
- The property that is the subject of the proposed amendment is not located within an area of critical state concern.

Definition of "built-out"

- The bill defines the term "built-out" as "90 % of the property within the municipality's boundaries, excluding lands that are designated as conservation, preservation, recreation, or public facilities categories, have been developed, or are the subject of an approved development order that has received a building permit, and the municipality has an average density of five units per acre for residential development."

Notice Requirements

- The bill provides that a local government is not required to comply with notice requirements so long as they comply with the provisions of s. 166.041 (3) (c), F.S. Further, the bill authorizes only local governments to enjoy the exemption provided for in this provision.

- The local government shall send copies of the notice and amendment to the state land planning agency, the regional planning council, and any other person or entity requesting a copy, along with a statement identifying any property subject to the amendment that is located within a coastal high hazard area as identified in the local comprehensive plan.

Public Hearing

- The bill provides that amendments adopted pursuant to the provisions of this bill will require only one public hearing before the governing board, which shall be an adoption hearing, and are not subject to the requirements of s.163.3184 (3) – (6), F.S., unless the local government elects to have them subjected to those requirements.

Annexation

- The bill provides that a municipality may not have the benefit of this exemption if it annexes unincorporated property that decreases the percentage of build-out to an amount below 90%.

Notice of buildout

- The bill provides that the local government must notify DCA in writing of its built-out percentage prior to the submission of any local comprehensive plan amendments under this bill.

Century Commission for a Sustainable Florida

The bill provides that the Century Commission shall function independently of the control and direction of DCA, except for administrative and fiscal assistance. Further, the bill provides that the Century Commission shall develop and submit a budget that is not subject to change by DCA that then will be submitted to the governor along with DCA's budget.

Transportation Regional Incentive Program (TRIP)

The bill provides that federal urban attributable funds are eligible as a local match for transit projects under the TRIP by removing the requirement that the local match be nonfederal share of the project cost for a public transportation facility project.

Developments of Regional Impact

The bill provides that the transportation agreement required by the current law for an exemption from DRI review for urban service boundaries, infill and redevelopment areas, and rural land stewardship areas will be limited to transportation absent such an agreement. Further, the local government must notify DCA if they do not reach such an agreement.

C. SECTION DIRECTORY:

Section 1: Amends s. 163.3177, F.S., relating to required and optional elements of comprehensive plan.

Section 2: Amends s. 163.3180, F.S., relating to concurrency.

Section 3: Amends s. 163.3187, F.S., relating to amendments of adopted comprehensive plans.

Section 4: Creates paragraphs (h) and (i) of subsection (4) of s. 163.3247, F.S., relating to powers and duties of the Century Commission of a Sustainable Florida

Section 5: Amends s. 339.2819, F.S., relating to the Transportation Regional Incentive Program.

Section 6: Amends subsection (24) and creates subsection (28) of s. 380.06, F.S., relating to Developments of Regional Impact

Section 7: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Growth Management Committee adopted amendments to the PCB on March 28, 2006. The amendments made the following changes:

- Provides that a third party challenge, or the outcome of such challenge, to the 5-year schedule of capital improvements does not affect adoption of further plan amendments to the future land use map.
- Provides that challenge to the addition, elimination, deferral or delay of a facility to the 5-year schedule of capital improvements may only occur when the project is first proposed for such addition, elimination, deferral or delay.
- Provides that when a local government, in cooperation with the DOT adopts a five-year or longer term transportation improvement plan and makes financial commitments to fund the plan, is deemed to meet transportation concurrency even if in any particular year the improvements are not concurrent.
- Provides an exemption from transportation concurrency fort municipalities that have an area-wide development of regional impact or downtown development authority, which boundaries has not changed since 2005, and which has adopted a plan to address transportation deficiencies.
- Provides for a transportation concurrency exemption for municipalities 90% built-out and provides criteria to be eligible for such an exemption.
- Prevents a "not – in – compliance" determination based upon school capacity until December 1, 2008, provided that data and analysis is submitted to DCA demonstrating coordination between the school board and the local government to plan to address capacity issues.
- Removes the requirement to incorporate the school concurrency service areas and establish criteria and standards into the comprehensive plan, when school concurrency is applied on a less than district-wide basis.
- Clarifies the organization reporting structure for the Century Commission for a Sustainable Florida and provides guidance for the development of its annual budget.
- Provides that federal urban attributable funds are eligible as a local match for transit projects under TRIP by removing the provision that the matching funds may be up to 50 percent of the nonfederal share of the eligible project cost for a public transportation facility project.
- Creates a partial development or regional impact exemption for urban service boundaries, infill and redevelopment areas, and rural land stewardship areas if the required binding agreement between the local government, impacted jurisdictions, and DOT required for the full exemption is not attained.

A bill to be entitled

An act relating to growth management; amending s. 163.3177, F.S.; deleting a requirement that the entire comprehensive plan be financially feasible; specifying limitations on challenges to certain changes in a 5-year schedule of capital improvements; authorizing local governments to continue adopting land use plan amendments during challenges to the plan; amending s. 163.3180, F.S.; providing that certain local governments are concurrent with an adopted transportation improvements plan notwithstanding certain improvements not being concurrent; providing for a waiver of transportation facilities concurrency requirements for certain urban infill, redevelopment, and downtown revitalization areas and certain built-out municipalities; requiring local governments and the Department of Transportation to establish a plan for maintaining certain level-of-service standards; providing requirements for the waiver for such built-out municipalities; exempting certain municipalities from certain transportation concurrency requirements; deleting record-keeping and reporting requirements related to transportation de minimis impacts; providing that school capacity is not a basis for finding a comprehensive plan amendment not in compliance; deleting a requirement to incorporate the school concurrency service areas and criteria and standards for establishment of the service areas into the local government comprehensive plan; amending s. 163.3187, F.S.; authorizing approval of

certain small scale amendments to a comprehensive plan for certain built-out municipalities; providing criteria, requirements, and procedures; providing for nonapplication under certain circumstances; amending s. 163.3247, F.S.; assigning the Century Commission for a Sustainable Florida to the Department of Community Affairs for administrative and fiscal accountability purposes; requiring the commission to develop a budget; providing budget requirements; amending s. 339.2819, F.S.; revising criteria for matching funds for the Transportation Regional Incentive Program; amending s. 380.06, F.S.; revising an exemption from development of regional impact review for certain developments within an urban service boundary; limiting development-of-regional-impact review of certain urban service boundaries, urban infill and redevelopment areas, and rural land stewardship areas to transportation impacts only under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) and paragraph (b) of subsection (3) of section 163.3177, Florida Statutes, are amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.--

(2) Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be

consistent, and the comprehensive plan shall be ~~financially~~ feasible. ~~Financial~~ Feasibility shall be determined using professionally accepted methodologies.

(3)

(b)1. The capital improvements element shall be reviewed on an annual basis and modified as necessary in accordance with s. 163.3187 or s. 163.3189 in order to maintain a financially feasible 5-year schedule of capital improvements. Corrections and modifications concerning costs; revenue sources; or acceptance of facilities pursuant to dedications which are consistent with the plan may be accomplished by ordinance and shall not be deemed to be amendments to the local comprehensive plan. A copy of the ordinance shall be transmitted to the state land planning agency. An amendment to the comprehensive plan is required to update the schedule on an annual basis or to eliminate, defer, or delay the construction for any facility listed in the 5-year schedule. An affected person may challenge the addition of a facility, or the elimination, deferral, or delay of a project, only when the facility is first added to the 5-year schedule of capital improvements or when the project is proposed to be eliminated, deferred, or delayed. All public facilities shall be consistent with the capital improvements element. Amendments to implement this section must be adopted and transmitted no later than December 1, 2007. Thereafter, a local government may not amend its future land use map, except for plan amendments to meet new requirements under this part and emergency amendments pursuant to s. 163.3187(1)(a), after December 1, 2007, and every year thereafter, unless and until

the local government has adopted the annual update and it has been transmitted to the state land planning agency. If an affected party challenges the 5-year schedule of capital improvements, a local government may continue to adopt plan amendments to the future land use map during the pendency of the challenge and any related litigation. The outcome of a third-party challenge to the 5-year schedule of capital improvements shall not affect any amendments adopted during the pendency of such challenge and any related litigation.

2. Capital improvements element amendments adopted after the effective date of this act shall require only a single public hearing before the governing board which shall be an adoption hearing as described in s. 163.3184(7). Such amendments are not subject to the requirements of s. 163.3184(3)-(6).

Section 2. Paragraph (c) of subsection (2), subsection (6), and paragraphs (d) and (g) of subsection (13) of section 163.3180, Florida Statutes, are amended, and paragraphs (h) and (i) are added to subsection (5) of that section, to read:

163.3180 Concurrency.--

(2)

(c) Consistent with the public welfare, and except as otherwise provided in this section, transportation facilities needed to serve new development shall be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation. However, local governments that adopt, in cooperation with the Department of Transportation, a 5-year or longer transportation improvements plan for future

development and make the financial commitments to fund such plan shall be deemed concurrent throughout the duration of the plan even if, in any particular year, such transportation improvements are not concurrent.

(5)

(h) It is a high state priority that urban infill and redevelopment be promoted and provided incentives. By promoting the revitalization of existing communities of this state, a more efficient maximization of space and facilities may be achieved and urban sprawl discouraged. If a local government creates a long-term vision for its community that includes adequate funding, services, and multimodal transportation options, the transportation facilities concurrency requirements of paragraph (2)(c) are waived:

1.a. For urban infill and redevelopment areas designated in the comprehensive plan under s. 163.2517; or

b. For areas designated in the comprehensive plan prior to January 1, 2006, as urban infill development, urban redevelopment, or downtown revitalization.

The local government and the Department of Transportation shall cooperatively establish a plan for maintaining the adopted level-of-service standards established by the Department of Transportation for Strategic Intermodal System facilities, as defined in s. 339.64.

2. For municipalities that are at least 90 percent built-out. For purposes of this exemption:

a. The term "built-out" means that 90 percent of the

property within the municipality's boundaries, excluding lands that are designated as conservation, preservation, recreation, or public facilities categories, have been developed or are the subject of an approved development order that has received a building permit and the municipality has an average density of five units per acre for residential developments.

b. The municipality must have adopted an ordinance that provides the methodology for determining its built-out percentage, declares that transportation concurrency requirements are waived within its municipal boundary or within a designated area of the municipality, and addresses multimodal options and strategies, including alternative modes of transportation within the municipality. Prior to the adoption of the ordinance, the local government shall consult with the Department of Transportation to assess the impact that the waiver of the transportation concurrency requirements is expected to have on the adopted level-of-service standards established for Strategic Intermodal System facilities, as defined in s. 339.64. Further, the local government shall cooperatively establish a plan for maintaining the adopted level-of-service standards established by the department for Strategic Intermodal System facilities, as described in s. 339.64.

c. If a municipality annexes any property, the municipality must recalculate its built-out percentage pursuant to the methodology set forth in its ordinance to verify whether the annexed property may be included within the exemption.

d. If transportation concurrency requirements are waived

under this subparagraph, the municipality must adopt a comprehensive plan amendment pursuant to s. 163.3187(1)(c), which updates its transportation element to reflect the transportation concurrency requirements waiver, and must submit a copy of its ordinance, adopted in sub-subparagraph b., to the state land planning agency.

(i) A municipality that has an areawide development of regional impact created under s. 380.06(25) or a downtown development authority created under 380.06(22) is exempt from the requirements of transportation concurrency within the designated area if the municipality has not increased the boundaries of the development of regional impact after July 1, 2005, and adopts a mitigation plan, with funding identified, to address transportation deficiencies if one has not been adopted as part of the creation of the areawide development of regional impact.

(6) The Legislature finds that a de minimis impact is consistent with this part. A de minimis impact is an impact that would not affect more than 1 percent of the maximum volume at the adopted level of service of the affected transportation facility as determined by the local government. No impact will be de minimis if the sum of existing roadway volumes and the projected volumes from approved projects on a transportation facility would exceed 110 percent of the maximum volume at the adopted level of service of the affected transportation facility; provided however, that an impact of a single family home on an existing lot will constitute a de minimis impact on all roadways regardless of the level of the deficiency of the

roadway. Further, no impact will be de minimis if it would exceed the adopted level-of-service standard of any affected designated hurricane evacuation routes. ~~Each local government shall maintain sufficient records to ensure that the 110 percent criterion is not exceeded. Each local government shall submit annually, with its updated capital improvements element, a summary of the de minimis records. If the state land planning agency determines that the 110 percent criterion has been exceeded, the state land planning agency shall notify the local government of the exceedance and that no further de minimis exceptions for the applicable roadway may be granted until such time as the volume is reduced below the 110 percent. The local government shall provide proof of this reduction to the state land planning agency before issuing further de minimis exceptions.~~

(13) School concurrency shall be established on a districtwide basis and shall include all public schools in the district and all portions of the district, whether located in a municipality or an unincorporated area unless exempt from the public school facilities element pursuant to s. 163.3177(12). The application of school concurrency to development shall be based upon the adopted comprehensive plan, as amended. All local governments within a county, except as provided in paragraph (f), shall adopt and transmit to the state land planning agency the necessary plan amendments, along with the interlocal agreement, for a compliance review pursuant to s. 163.3184(7) and (8). The minimum requirements for school concurrency are the following:

(d) Financial feasibility.--The Legislature recognizes that financial feasibility is an important issue because the premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level-of-service standard. This part and chapter 9J-5, Florida Administrative Code, contain specific standards to determine the financial feasibility of capital programs. These standards were adopted to make concurrency more predictable and local governments more accountable.

1. A comprehensive plan amendment seeking to impose school concurrency shall contain appropriate amendments to the capital improvements element of the comprehensive plan, consistent with the requirements of s. 163.3177(3) and rule 9J-5.016, Florida Administrative Code. The capital improvements element shall set forth a financially feasible public school capital facilities program, established in conjunction with the school board, that demonstrates that the adopted level-of-service standards will be achieved and maintained.

2. Such amendments shall demonstrate that the public school capital facilities program meets all of the financial feasibility standards of this part and chapter 9J-5, Florida Administrative Code, that apply to capital programs which provide the basis for mandatory concurrency on other public facilities and services.

3. When the financial feasibility of a public school capital facilities program is evaluated by the state land planning agency for purposes of a compliance determination, the

evaluation shall be based upon the service areas selected by the local governments and school board.

4. School capacity shall not be the basis to find any amendment to a local government comprehensive plan not in compliance pursuant to s. 163.3184 until the date established pursuant to s. 163.3177(12)(i), provided data and analysis are submitted to the state land planning agency demonstrating coordination between the school board and the local government to plan on addressing capacity issues.

(g) Interlocal agreement for school concurrency.--When establishing concurrency requirements for public schools, a local government must enter into an interlocal agreement that satisfies the requirements in ss. 163.3177(6)(h)1. and 2. and 163.31777 and the requirements of this subsection. The interlocal agreement shall acknowledge both the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis, and the land use authority of local governments, including their authority to approve or deny comprehensive plan amendments and development orders. The interlocal agreement shall be submitted to the state land planning agency by the local government as a part of the compliance review, along with the other necessary amendments to the comprehensive plan required by this part. In addition to the requirements of ss. 163.3177(6)(h) and 163.31777, the interlocal agreement shall meet the following requirements:

1. Establish the mechanisms for coordinating the development, adoption, and amendment of each local government's

public school facilities element with each other and the plans of the school board to ensure a uniform districtwide school concurrency system.

2. Establish a process for the development of siting criteria which encourages the location of public schools proximate to urban residential areas to the extent possible and seeks to collocate schools with other public facilities such as parks, libraries, and community centers to the extent possible.

3. Specify uniform, districtwide level-of-service standards for public schools of the same type and the process for modifying the adopted level-of-service standards.

4. Establish a process for the preparation, amendment, and joint approval by each local government and the school board of a public school capital facilities program which is financially feasible, and a process and schedule for incorporation of the public school capital facilities program into the local government comprehensive plans on an annual basis.

5. Define the geographic application of school concurrency. If school concurrency is to be applied on a less than districtwide basis in the form of concurrency service areas, the agreement shall establish criteria and standards for the establishment and modification of school concurrency service areas. ~~The agreement shall also establish a process and schedule for the mandatory incorporation of the school concurrency service areas and the criteria and standards for establishment of the service areas into the local government comprehensive plans.~~ The agreement shall ensure maximum utilization of school capacity, taking into account transportation costs and court-

approved desegregation plans, as well as other factors. The agreement shall also ensure the achievement and maintenance of the adopted level-of-service standards for the geographic area of application throughout the 5 years covered by the public school capital facilities plan and thereafter by adding a new fifth year during the annual update.

6. Establish a uniform districtwide procedure for implementing school concurrency which provides for:

a. The evaluation of development applications for compliance with school concurrency requirements, including information provided by the school board on affected schools, impact on levels of service, and programmed improvements for affected schools and any options to provide sufficient capacity;

b. An opportunity for the school board to review and comment on the effect of comprehensive plan amendments and rezonings on the public school facilities plan; and

c. The monitoring and evaluation of the school concurrency system.

7. Include provisions relating to amendment of the agreement.

8. A process and uniform methodology for determining proportionate-share mitigation pursuant to subparagraph (e)1.

Section 3. Paragraph (p) is added to subsection (1) of section 163.3187, Florida Statutes, to read:

163.3187 Amendment of adopted comprehensive plan.--

(1) Amendments to comprehensive plans adopted pursuant to this part may be made not more than two times during any calendar year, except:

(p)1. For municipalities that are more than 90 percent built-out, any municipality's comprehensive plan amendments may be approved without regard to limits imposed by law on the frequency of consideration of amendments to the local comprehensive plan only if the proposed amendment involves a use of 100 acres or fewer and:

a. The cumulative annual effect of the acreage for all amendments adopted pursuant to this paragraph does not exceed 500 acres.

b. The proposed amendment does not involve the same property granted a change within the prior 12 months.

c. The proposed amendment does not involve the same owner's property within 200 feet of property granted a change within the prior 12 months.

d. The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan but only proposes a land use change to the future land use map for a site-specific small scale development activity.

e. The property that is the subject of the proposed amendment is not located within an area of critical state concern.

2. For purposes of this paragraph, the term "built-out" means 90 percent of the property within the municipality's boundaries, excluding lands that are designated as conservation, preservation, recreation, or public facilities categories, have been developed or are the subject of an approved development order that has received a building permit and the municipality

has an average density of five units per acre for residential development.

3.a. A local government that proposes to consider a plan amendment pursuant to this paragraph is not required to comply with the procedures and public notice requirements of s. 163.3184(15)(c) for such plan amendments if the local government complies with the provisions of s. 166.041(3)(c). If a request for a plan amendment under this paragraph is initiated by other than the local government, public notice of the amendment is required.

b. The local government shall send copies of the notice and amendment to the state land planning agency, the regional planning council, and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high hazard area as identified in the local comprehensive plan.

4. Amendments adopted pursuant to this paragraph require only one public hearing before the governing board, which shall be an adoption hearing as described in s. 163.3184(7), and are not subject to the requirements of s. 163.3184(3)-(6) unless the local government elects to have them subject to those requirements.

5. This paragraph shall not apply if a municipality annexes unincorporated property that decreases the percentage of build-out to an amount below 90 percent.

6. A municipality shall notify the state land planning agency in writing of the municipality's built-out percentage

prior to the submission of any comprehensive plan amendments under this subsection.

Section 4. Paragraphs (h) and (i) are added to subsection (4) of section 163.3247, Florida Statutes, to read:

163.3247 Century Commission for a Sustainable Florida.--

(4) POWERS AND DUTIES.--The commission shall:

(h) Be assigned to the Office of the Secretary of the Department of Community Affairs for administrative and fiscal accountability purposes but shall otherwise function independently of the control and direction of the department.

(i) Develop a budget pursuant to chapter 216. The budget is not subject to change by the department but shall be submitted to the Governor together with the department's budget.

Section 5. Subsection (2) of section 339.2819, Florida Statutes, is amended to read:

339.2819 Transportation Regional Incentive Program.--

(2) The percentage of matching funds provided from the Transportation Regional Incentive Program shall be 50 percent of project costs~~, or up to 50 percent of the nonfederal share of the eligible project cost for a public transportation facility project~~.

Section 6. Paragraphs (l) and (n) of subsection (24) of section 380.06, Florida Statutes, are amended, and subsection (28) is added to that section, to read:

380.06 Developments of regional impact.--

(24) STATUTORY EXEMPTIONS.--

(l) Any proposed development within an urban service boundary established under s. 163.3177(14) is exempt from the

provisions of this section if the local government having jurisdiction over the area where the development is proposed has adopted the urban service boundary, ~~and~~ has entered into a binding agreement with ~~adjacent~~ jurisdictions that would be impacted and with the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate share methodology pursuant to s. 163.3180(16).

(n) Any proposed development or redevelopment within an area designated as an urban infill and redevelopment area under s. 163.2517 is exempt from ~~the provisions of~~ this section if the local government has entered into a binding agreement with jurisdictions that would be impacted and the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate share methodology pursuant to s. 163.3180(16).

(28) PARTIAL STATUTORY EXEMPTIONS.--

(a) If the binding agreement referenced under paragraph (24)(l) for urban service boundaries is not entered into within 12 months after establishment of the urban service boundary, the development-of-regional-impact review for projects within the urban service boundary must address transportation impacts only.

(b) If the binding agreement referenced under paragraph (24)(n) for designated urban infill and redevelopment areas is not entered into within 12 months after the designation of the area or July 1, 2007, whichever occurs later, the development-of-regional-impact review for projects within the urban infill and redevelopment area must address transportation impacts only.

(c) If the binding agreement referenced under paragraph (24)(m) for rural land stewardship areas is not entered into within 12 months after the designation of a rural land stewardship area, the development-of-regional-impact review for projects within the rural land stewardship area must address transportation impacts only.

(d) A local government that does not wish to enter into a binding agreement or that is unable to agree on the terms of the agreement referenced under paragraph (24)(l), paragraph (24)(m), or paragraph (24)(n) shall provide written notification to the state land planning agency of the desire not to enter into a binding agreement or a failure to enter into a binding agreement within the 12-month period referenced in paragraph (a), paragraph (b), or paragraph (c). Following the notification of the state land planning agency, the development-of-regional-impact review for projects within the urban service boundary under paragraph (24)(l), within a rural land stewardship area under paragraph (24)(m), or for an urban infill and redevelopment area under paragraph (24)(n) must address transportation impacts only.

Section 7. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7253**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Carrol offered the following:

Amendment (with directory and title amendments)

Between lines 396 and 397 insert:

(3)

(a) The commission shall consist of 15 members, 5 appointed by the Governor, 5 appointed by the President of the Senate, and 5 appointed by the Speaker of the House of Representatives. Appointments shall be made no later than October 1, 2005. The membership must represent local governments, school boards, developers and homebuilders, the business community, the agriculture community, the environmental community, and other appropriate stakeholders. The membership shall reflect the demographic make up of the state. One member shall be designated by the Governor as chair of the commission. Any vacancy that occurs on the commission must be filled in the same manner as the original appointment and shall be for the unexpired term of that commission seat. Members shall serve 4-year terms, except that, initially, to provide for staggered

terms, the Governor, the President of the Senate, and the Speaker of the House of Representatives shall each appoint one member to serve a 2-year term, two members to serve 3-year terms, and two members to serve 4-year terms. All subsequent appointments shall be for 4-year terms. An appointee may not serve more than 6 years.

========== D I R E C T O R Y A M E N D M E N T ==========

Remove line 394 and 395 and insert:

Section 4. Paragraph (a) of subsection (3) of section 163.3247, Florida Statutes, is amended and paragraphs (h) and (i) are added to subsection (4) of that section to read:

================ T I T L E A M E N D M E N T ============

Remove lines 33 and insert:

Providing the membership of the Century Commission for a Sustainable Florida must reflect the demographic make up of the state; assigning the Century Commission for a Sustainable Florida